Gabrielis Harvey · 1579 ·

Institutions or Principall groundes of the Lawes, and statutes of England; newly and very truly corrected and amended, with many new and goodly additions; very profitable for al sortes of people to knowe; lately augmented and imprinted.

Poco, y bueno. Harvey.

Consuetudo Romae, ut Leges XII. Tab. à pueris edisserentur, ut Carmen necessarium. Cr. l. 2. de Legib.

Q. Mutius Sulpitio Oratori, iterum interroganti, respondit; Turpe esse Patricio, et nobili viro, causas in Foro peroranti, Jus, in quo versaretur, ignorare.

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[1567]

[n.d.]

Law office

The Prologue of the Author to the Reader.

Demosthenesse ỳ renoumed Orator, defineth law in this wyse. The law (saith he) is the thinge that all men oughte to obey for many skilles, but in especially because lawe is the invention, and also the gift of God, the decrees of prudent men, the chastisement of wilfull and vnwilfull offences, and finally the common surety of a Realme, wherby it becommeth all men to liue, which be conuersant in the same. Chrisippus also, an excellent Philosopher thus beginneth his booke of lawes, The law is kinge of all as wel deuine as humain affaires, the president and controller of things honest and dishonest, the prince, Captayne and ruler of the iust & vniust, and it is of ciuill creatures, as wel the commaunder what they ought to do as ỳ forbidder, what they ought not to do. These autentike, saynges of wise men, assuredly ought mutch to inflame vs to the knowledge of those things whithout which we shalbe estemed as no mẽ but as brute and sauage beastes. Let vs not commit that it bee sayde of Englishmen as it was once sayd of the men of Athens, that is, that we make very good and profitable lawes but we vse them not. Certaynly there can be no greater reproche to a common weale, then

this. One lesson I would we learned of the auncient lawer Romaine named Celsus, and ẏ is this, the knowledge of law is not to bear awaye the woordes, but the pith and power of them. This is wrote because ther be many which when good & holesom lawes be made, seeke not to see theim excecuted and obserued, but rather how to defraude them, and to haue them vnexcecuted, which kind of people after the sentence of most aũcient lawmakers beno lesse worthy of reprehension then they which do expressely agaynst the law, Now they do (say they) agaĩst the law which do the thing that the law forbiddeth. And they defraude a law or statute, which the words of the lawe saued, do circumuẽt the meaning and sentence of it. Let vs then so read the lawes ẏ we may beare away the sentence and minde of them: and so fulfil and obserue the lawes that it may appere that they were not made in vayne. Thus doing we shal please god; wee shall bee obedient subiects to our Prynce;

And finally wee shall seeke our owne wtale and safetye.

Valet Senatusc. Macedon. in sola pecunia mutua; nõ in aliis rebus, quamuis mutuo possint dari, ut in frumẽto, oleo, vino: nisi cum his rebus fraus S.C. fuerit quaesita: tũ enim subuenit filiofam. l. 7. ff. ad S.C. Macedon. Item l. sicut. ff. quibus mod. pig. ud hypoth. sol. hic casus proponitur; Debitor, consentiente creditore, rẽ pignori obligatã uendidit; deindè eam emit, et possidet: si debita pecunia soluta nõ sit, et Excipiat debitor, quòd uolũtate Creditoris, res sit uendita, et ideò remissũ pignus uideat, per l. si cõsensit. eod. t: respõdit J.C. Replicatione Doli mali, Creditori dari.

grounds of the Lawe.

What is Lawe. iii.

J.C.

The law is the direction & ministration of Iustice. And iustice is (as the Emperor Iustinian saith in his institutions) a cōstant and permanent wil, to render vnto euery person his right and duty.

The learning or prudence of law, is a knowledge of diuine and humane things, a Science and perfect notice of equity, and iniquity, of right, and wrong.

Now forasmuch as a great portion of the prudence, or science of ye lawes of this realme of England cōsisteth in the perfit knowledg of estates, which men haue in lands and tenements, wee shal firste as compendiously, and as simply and playnly as we can, treate somwhat of estates.

A deuision of estates.

Yee shall therefore vnderstand, that whosoeuer hath any estate in landes or tenementes, either he hath in the same only a chattel, or a frehold, or inheritance. If he hath an estate but for terme of certayne yeres, or at his landlords wil, so it is called a chattell; if for terme of his life, or for any other mans life, it is called a frehold. And if he hath to him and to his heires in fee simple or in taile, then he hath a state of inheritaunce.

1. Chattel.
2. Freholde.
3. Inheritaunce.

Tenaunt for terme of yeares.

TEnant for term of yeres, is he to whō landes or tenements be left for terme of certain yeres, as is agreed betwene the landlord and the tenant. And whē ỹ persō to whom such lease is made, doth enter by force of the sayde lease, and is in possession of the same: then he is called tenante for terme of yeares.

Rente reserued.

And ther ye shal note, that if the lessour that made the lease, hath reserued vnto him a yerely rent vpon the said lease, as it is accustomably vsed to be don; if ỹ rent be behind vnpaid, it shall be in his election eyther to enter and distrayne for the rent; or to bring an action of det agaynst him at the law for the arrerages of the same. But in this case it is requisite ỹ the lessour were seased of the landes or tenementes at the time of the making of the lease. for otherwise it shal be a good plee in the actiō of det for the tenant to say, that the lessour had nothing in the land and tenemente at the tyme of the lease made; except the lease were made by deede indented; for then the plea shal not lie in the tenantes mouth to pleade.

Action of det.

A good plee.

Liuery of season. neede not in a lease for terme of yeares.

And it is to bee knowen that in a lease for terme of yeares, whether it be by deede or without dede, ther nede no liuery of season to be made to the leasee; but hee may enter when he wil by vertue of this lease, without anye further ceremony of the law.

And if a man leaseth lands for terme of yeres, though the lessour chanceth to die before the lessee doth enter, yet he may enter wel enough. Otherwyse it is wher liuery of seasō is to be made, as in freholds & inheritance.

Also

Also if the tenaunt for yeres doth wast, the landlord may bring an action of wast against him and shal recouer the place wasted, & hys treeble damages. waste.

Also if a lease for yeares be made of two seuerall thinges, & after the one is recouered, ỹ lessee shal hold the other, and the rent or terme shalbe apportioned. M.xij. H.viij.

Also if the tenaunt for yeares graunteth a greater estate in the lād, then he hath himself, whereby he coueieth the fee simple to himself; he shall forfeit his lease or terme. Forfayture.

Tenant at wyll.

Tenaunt at will, is he to whome lands or tenements be leased to haue & hold the same at the wil of the lessour. And in this case ỹ lessour may put out his tenant what time him listeth. But yet neuertheless if the tenant haue sowed the grouds with corn, in this case if the lessour wil enter and put out his tenaunte before Haruest, the Law wil geue him free comming and going to reape & cary his corne away, without any punishement or damages to bee sustained for his so doing, because hee knewe not at what time the lessour would enter. But otherwise it is of tenaunte for certaine yeares, for if hee soweth the ground, & the terme of the lease be come out and expyred before the corne bee ripe, in this case the lessour or he in the reuersion may enter and take the Corne, because it was the folly of the tenant to sow the grouⁿd knowing the end of his terme.

In likewise tenaunt at wil shal haue free=

folly punisshid.

comming and going after the time of the lessours entry, to cary away his houshold stuffe and goodes for a reasonable space.

Distres or elis actiō of det

Ye shal also vnderstand, that he that maketh a lease at wil, may reserue an annual or yerely rent, in which case if the rent be behind, he may enter very well and distrayn the goods and cattals of the tenant, or at his election, he may bring an action of det agaynst him.

Also it is to be knowen, that tenaunt at wil of a mese, or tenement, is not bōd by the order of the law to sustaine and repayre the houses

Waste. that be decayed and ruinous, as is the tenant for yeares, and therefore no action of wast lieth against him; yet if he wil do wylful wast as if he plucketh down the houses, or cutteth downe the trees: it hath ben thought by the sages of the law, that the lessour may brynge

Trespas an action of trespas against him, & shal recouer his losses thereby sustained.

And if such a tenant dye, and his heire enter, in that case the lessour may haue an action of Trespas agaynst the heire.

Tenaunt by copy of court rolle.

THer is an other kynd of tenant at wil which is called tenaunt by copy of the court rolles. And this is whe a man is seased of a manor, with which it hath bene vsed time out of mynde, that the tenants within the bounds and precincte of the sayde manor, haue holden lands & tenements to thē & to their heires in fee simple, fee tayle or for terme of life, at the wil of the lord according to the custome of the manour. And such a

tenaun

nant cannot aliene or sel his land by his dede. for if he do, the land or tenement, that is so aliened and sold, is forfayt into the lords handes; but if he wyl aliene his coppehold lande, to another, he must according to the custome, come into the Lords court, & there surrender it into the lords hand, to the behouke & vse of him that shal haue the estate. The fourme of which surrender is commōly vsed to be this.

the alienac of copyhold land.

surrēdre.

Ad hanc curiam venit. A. de B. et sursum reddidit in eadem curia vnū messuagiū. &c. in manus dñi ad vsum. C. de. D. & heredum suorū vel heredū de corpore &c. Et super hoc venit predictus C. de D. et eripit de dñe in eadē cura messuagiū predictum. habendū et tenendum sibi. &c. ad voluntatem dñi secundum cōsuetudinem manerij, faciend. inde redditū seruitia et consuetudinis inde prius debitas et consuetas. &c. Et dat domino pro fine. &c. et facit domino fidelitatem.

The forme of surrendre.

These as I said be called tenants by copie of court rolle, because they haue none other euidence to shew concerning their lands, saue only the copies of the rolles of their lordes court. Neither can these tenaunts sue, or bee sued for sutch lands in the kinges Court by writ or otherwise; but if they wil in any wise implede or sue others for sutch copyholde lands, they must do it by waye of playnt in the lordes court after this sort.

A. de B. queritur versus C. de D de placito terre videlicet de vno messuagio xl: acris terre. iiij. acris prati &c. cum pertinentijs, et facit protestationem sequi querelā istam in nature

The forme of the playnte.

breuia

breuis dñi regis assise mortis antecessoris ad cõmunẽ legẽ vol. &c. plegij de prosequendo. F. G. &c. Now although some such tenauntes haue an inheritance according to the custome of ỹ manour; yet in very dede they are but tenants at the wil of the lord. For as some men thincke, if the lord wil expel them, & put them forth they haue no remedy at all, but to sue vnto their lord by wai of petition desiring hi to be good & gracious lorde vnto them. For if they might haue any remedy by the law, then should they not be called (say they) tenaunts at the wil of the lord, after the custome of the manour. But other men of no lesse learning & prudence haue beene of contrary sentence, as lord Brian chiefe iustice in the tyme of king Edward the iij. whose opinio was alwaies that if such tenaunt by the custome (paying his seruices) be ejected and put forth by his lord without cause reasonable, he may very well bring & maynteine an action of trespasse against his lord at the common Law, as appeareth termino Hillarij. an. xxj. E. iij. Also lord Danby chief Justice in like wise, was of ỹ same iudgment, as appeareth termino Mi. An vij. E. iiij. where he sayeth, that the Tenaunt by the custome, is as wel inheritable to haue his lãd after the custom, as is he that hath a free holde at the common law; but the determination of this question, I remit to my great maisters which can solue the knots and enigmates of the law:

For asmutch as yet stil of this matter, Caudici certant, et adhuc sub iudice lis est

Also yee shal vnderstand that the vsage of

som

ſome manours is, when the tenante wil ſurrender his land to the vſe of an other, that he ſhal take a wand or a rodde in his hand & deliuer it to ỹ ſteward of ỹ court, & the ſteward ſh al deliuer the ſame wand in name of ſeiſin to him that ſhal take the land; and ſuch a tenant is called tenaunt by the verge. Diuers other cuſtoms there be of ſurendring of copihold lands, which here for tediouſnes I wil omit, And for aſmuche as tenaunte by cuſtome of the Manour, haue by the courſe of the common law no freehold: therfore they be called tenantes of the baſe tenure.

Baſe tenure.

Alſo if ſuch a tenant letteth to ferm his copyhold lande for longer tyme then a twelfmoneth and a day, without the lords licence, it is a forfayture of his land to his lorde.

And know ye that if this tenant fel any timber that groweth vppon the land, but onely for the reparation of the ſame, this is waſt & a forfayture of his copyhold.

Hitherto haue I treated of the firſte member of our deuiſion, ỹ is to wit of chatels; for as I ſayde, all leaſes for terme of yeares, & at wil, be accompted of the law but as chatelles, and be compriſed vnder that name, ſaue that they be called chatels realles; whereas Kyne, Oxen, Horſes; Money, Plate, Corne, and ſuch like be called chatel perſonalles. Nowe wee wil proceede to the explanation of the ſeconde member, that is to ſay of freeholdes.

Chatell real and perſonall.

For

FReeholds or francke tenementes a man may haue in sundry wises; for either hee is seised for terme of his own life, or for terme of another mãs life. If he be seised for terme of his owne life, either he hath gotten sutch estate by way of purchase, or els the law hath entituled him thereunto. I cal it by purchase, whether he commeth vnto it by his owne bargaining and procurement, or by the gift of his frende; and I call by the operation and intituling of the law, when a mã marith a woman that is an inheritresse, & hath issue by hir, and she dieth, nowe shall hee haue the landes during his life, by the course of ẏ law and shalbe called Tenaunte by the curtesie of Eugland.

Tenaunt by ẏ curtesie.

In likewise, if aman be seased in fee simple or fee tayle of lands, and taketh a Wyfe, and he dieth, the law geueth vnto ẏ wife ẏ thirde part of hir husbands lands for terme of her lyfe, and she shalbe called tenaunt in dower.

Tenaunt in dower.

Tenaunt for terme of lyfe.

TEnaũt for terme of life, is he that holdeth landes or tenements for terme of his own lyfe, or for terme of anothers life. How beit the most frequent & cõmon maner of speaking is to cal him ẏ hath estate for terme of his own life tenaũt for life, & him ẏ hath estate for terme of anothers life, tenaunte for terme dautre vie, that is to saye tenaunt for terme of anothers lyfe.

Yee shall note that like as hee that maketh the leasse is called the lessour, and hee to whõ

the lease is made is called the lessee, so he that maketh a feoffement, is called the feoffor, and he to whom the feoffment is made, the feoffee.

Also if tenaunt for terme of life, or tenaunt for terme of another mans life do waste, the lessour or he in their reuersion shal mayntayne very wel an action of waste agaynst him and shal by the same recouer treble damages. waste

Finally ye shall vnderstand that by an act of parliament made in the xxvii. yeare of ours soueraigne Lord that now is, king Henry the eight, it is enacted that no freehold, nor estate of inheritance shal passe nor take effect by reason of any bargayn and sale, except that same be made by wryting indented, sealed, and enrolled in one of the kings maiesties courts at Westmin. or els within the countye where ỹ land doth lie, before the custos Rotulorū, and ij. Justices of peace, and the clarke of the peace of the same County, or two of them at the least, of which the sayd clarke shalbe one. and that such inrollemente be made, within vi. monthes after the date of such writig. And for the enrolement of euery such wryting where the land cōprysed therein. is not aboue the yerely value of forty shyllinges, they shal take two shillinges, that is, twelue pence to the Justices and xij.d. to the clarke. And if the land be aboue ỹ yerely valeu of xl.s. thē they shall take v.s. that is ii.s. and vi.d. to the Justices and ii.s. and vi.d. to the Clarke, whiche shal inrolle and ingrosse sufficient in parchment such deed-s and wrytinges, and at euery yeres end he shal deliuer the same to the Custos rotulorum of the same county to remain

in his custody amōg other records of ye same county, so that the parties resortinge thither may see them. Prouided, that this extend not to any tenements or hereditamēts lying win any City or town corporat, wherin the mayres, Records, or other officers haue auctority or haue lawfully vsed to enrole any euidēces or writings within their precinct.

Tenaunt by the curtesy.

the vsufruit of his wiues land during his lyfe

TEnaūt by the curtesy of Englād is he that hath maried a Wyfe inherited, & hath had issue by hir, and shee is dead; in this case ye law of Englād permitteth & suffereth the husbād of such wife to receyue & keepe still all his wiues land that she had either in fee simple or fee taile, so long as he liueth. And this is by the curtesy & vrbanity of Englande, for this thinge is vsed in none other countrey or Region:

But in this, it is required that the childe be vital, ye is to say, be born & brought forth into this World aliue, and therefore the common saying is, and hath bin, that vnlesse the childe be heard cry, the father shal not be tenaunt by the curtesy, for the only profe and argument of lyfe in an insāt borne, is ye vagite & crying. Yee shal furthermore vnderstād, that vnlesse the husband be in actuall and reall possession, of his wyues lands, and seysed of them in hir right, he shal not be tenaunt by the curtesy, after hir death. And therefore if lands discend to a mans Wyfe, so that she is tenaunt in the law, and to euery mans action, yet if the husband haue not made an actual entree during

1. Cautele

2. Cautele

couer-

couerture and matrimony betwene them, hee shal not be tenaunt by curtesy; for it shalbe reputed and iudged his folly & negligence that he would not enter in hir life tyme.

Otherwise it is of aduousons, rēts, cōmons, and such other things, which forthwith whē they discend, be in a man or a womā without any entry or further ceremony of lawe.

Note that if a tenant by the curtesy of Englād wil suffer or make any waste in ỹ landes or tenements that he so holdeth, he is punishable therefore, by action of waste brought by him in the reuersion. 3 Cautele. Waste.

Also it is to be knowen, that of things that lye in suspence, a man shal not be tenant by ỹ curtesy; and therefore if a man be tenant in fee simple of certaine land, and doth entermarry, with a womā that is the seignoresse or Lady of the same, and hath issue by hir, & she dieth, yet shal he not be ỹ tenant by ỹ curtesy of the lordship or seignory, because himselfe, is tenaunt of the land; and therefore the lordship, is suspended for the time; for a man cannot be both Lord and tenant of one thinge; but if he had not ben tenaunt of the land, he shuld haue had the lordship after the death of his wife by the curtesie of England very well. 4 Cautele. A man cannot both Lord & Tenant of a thing.

Also note, that of a scyte onely a man shal not be tenaunt, by the curtesy; as if a woman sole seased, in fee of land or tenements, be disseised, and after take a husband, and they haue issue, and she die before any reentre made, the husband shal not be tenaunt by the curtesie. 5 Cautele.

Note further that of a reuersion, a man shall not be tenaunt by the curtesie; as if a woman. 6 Cautele.

sole

sole seased of lād in fee, make a lease to S. for terme of life, after taketh a husbande and they haue issue, & she die, liuing the leasee for terme of life, the husband shall not be tenaunt by ꝑ curtesie.

¶ Of tenaunt in dower.

Dower at ꝑ commō lawe.

Dower by custōe.

TEnaunt in dower is she that hath ben maried to an husbād that was during the matrimony, betwene them, seased, of lands or tenements in fee simple, or fee tayle, which is now dead, & she seased of ꝑ thirde part of hir husbandes sayde lands for term of hir life. For by the common law of ꝑ land if the husband be at any time during the couerture seased lawfully, whether it bee by purchase, by discent, eyther in fee, or in tayle, & dy, his wife shal not be endowed by ꝑ course of the cōmon law of the third foote. And in som places by an auncient custome, she shalbe endowed of the moity, yea & though the husband were neuer seased actually during ꝑ couerture, yet if the lands be caste vpon him by the law, so that the law calleth him tenant to euery mansaction, it sufficeth ꝑ womā to demaund hir dower; for it were vnreasonable ꝑ the negligence and slackneſſe of entring of the husband should hurt the wiues title.

Tenaunt by the curtesie.

Otherwise it is, as is said before of tenant by the curtesy; for if lands descended to a woman couert and ꝑ husband for slouthfulneſſe, or ngeligence doth not enter in his wiues like he shal not be tenaunt by the curtesy, for by al lawes the wife oweth obedience & subiectiō

to her husband, and therefore she cannot compel him to enter, but when lands discende to the wife, the husband only hath power to enter at his pleasure. 1. Cautele.

And ye shal understād that vnlesse ỹ Wife bee passed the age of nine yeres, at the time of her husbandes death, she shal not be endowed by the common law. IX. yeares old

But it is to be knowen that a womā may by diuers waies stoppe and preiudice hir self of her dower: as if shee committe any crime for which she is attainted of treason, murder, or felony, she get in this case no dower, notwithstanding she hath obteyned her pardon. A womā shal haue no dower. 2. Cautele.

Also, if after the death of hir husband shee taketh lease for terme of life of the same lands wherof shee is indowable, she loseth hir dower of the same. Moreouer if she departe from hir husband, & liueth in aduoutry with another man, and is not reconciled againe to her husbād without correction of ỹ ecclesiastical power she loseth her dower after hir husbāds death. 3. Cautele.

She shal be also barred of her dower if shee will withhold from the heyre ỹ charters & euidence, concerning that land, wherof she asketh dower. But none other saue the heyre, can withhold hir dower for this cause. 4. Cautele. 5. Cautele.

It ought not to be vnknowen also, of what thinges she may demaund dower, and of what thinges not. Of lands, messuages, aduoulōg rent charg, rēt seruices, or signories in grosse, or otherwyse of villaynes, of commons certayne, of estouers certayn, of milles, and offices, or of the profit of them, shee is dowable. But commons of estouers sans nombre, al- 6. Cautele. No dower.

so of annuities, of homages or things of pleasure, as of seruice, of payment of roses, and semblable she shal not be endowed.

Dowement ex assensu patris.

Ther be yet two other kinds of dower the one is called dowment ex assensu patris, that is to say, by the assent of the father, and the other is called dowment de la plus beale parte That is to say, of the fayrest part.

Dowment ex assensu patris, is when the father is seased of landes in fee simple, and his son which is heire apparant, endoweth hys wife at the Church doze, when he is espoused of parcel of his fathers landes with the assent of his father in wryting, testifyinge the same assent, if in this case her husband die sheemay forthwith enter into the lande so assigned vnto her, without further apoynted of proces of law, although the father of her sayd husbande be yet alyue and in actual possessiō of the lande But if she thus do, and take her to this endowment at the church doze, sheecannot haue her dower also, by the common law of the thyrd part of al her husbandes landes or any parcel of them; how be it, if she wil refuse this assygment made to her at the Church doze, and demaund dower at the comon law she may so do very wel.

Cantelo.

Dowement ad hostium ecclesie.

A man may also endow his wife at the time of the spousals of his owne lands, the which he hath by his owne possession, and that dower is called dower ad hostium ecclesie, that is to say, at the church doze.

Dowement de la plus beale parte

Dowment de la plus beale parte, ỹ is to say dowment of ỹ fairest part shalbe in this case, whā a mā is seased of lands which he holdeth

of

of another man by knights seruice, and of other landes which be of socage tenure, & hath issue, which is within the age of xiiij. yeres, & dy; and the lord of whom the lands is holden by knights seruice, entreth into ỹ land holden of him, and the mother of the child entreth into the socage tenure. as gardaine in socage, if in this case the woman will bring a writ of dower against the lord which is gardaine in chiualry, she may plede the speciall matter, & shew how she as gardeine in socage, hath so much land, and therupon pray the court that shee may bee suffred to indowe hirselfe of so mutch land, being in hir owne custod ye, that amoũted to the third part of the whole lands.

And then the iudgement shalbe that ỹ gardeine in chiualry shal retaine the land holden of him quite from the woman, during the nonage of the ward. After which iudgement and sentence geuen, she may go, & in ỹ presence of her neigbours, and endow hir self of the best part of that which is in her custody, amounting to the third part of ỹ whole, & then is she called tenaunt in dower de la plus belle.

Finally yee shal vnderstand that by a statute made in the. xxvij. yere of our most dread soueraigne Lord, king Henry the eyght, it is enacted, that where diuers persons haue estates made to theym and to their wiues, and to the heyres of the husband, or to the husband and wife, & the heyres of their two bodies be gotten, or the heyres of one of their bodies or for terme of both or one of theyr liues. or any other persons and their heyres, to the vse of the husband and wife, or to the wife alone for

Ay. 27. Henry. 8

her iointure: in euery such case the womā shal not be suffred to demaund any dowry of her residue of her husbandes lands to whom she hath ioynter, agaynst any tenante of the land, But in case shee hath no such ioynture, then may she demaund her dowry after the course of the comon law. Prouided neuertheles that if suche womē be lawfully expulsed frō their ioynter or any parte therof without fraud or couin, then shal they be endowed of the residue of their husbandes lands, for asmuch as the landes shal amount vnto, out of whiche they were so expulsed and put forth.

8 Cautele.

Prouided also, that if landes or tenementes be assured to anye woman after mariage for terme of life or otherwise in ioynture, except it be by act of parliament, and the wife ouerliue her husband, in whose time the ioynture was made, in this case, the wife may refuse ye landes so appoynted vnto her in ioynture, and haue her dower at the common law, of suche lāds as her husband was seased of, any time during the couerture.

9 Cautele.

Also if the husband committeth treason, murder or fellony for which he is attaynted. ye wife shal not haue her dower,

And note that if her husband enter into religion, & is professed, the heyre shal enter into the land, but the wife getteth no dower til ye husband dyeth M.32, D.2.

10 Cautele.

And likewise if a man seased of lande taketh a wyfe that is alien born, & dieth, she shal not be endowed, except she be made denisen by act of parliament. E.3 H,6. and note that wher the wife bringeth a writ of dower & recouer her

hir right, shee shall recouer no damages, but where hir husband died seased of the landes recouered. Damages.

3. A deuision of inheritaunce.

Hetherto haue I spokē of freholds; now it remayneth to treate of inheritaūces: not the inheritaūces ẏ be no freholdes, for there be freholds also, but of the other estates, of which I haue heretofore, treated, be only freholds, and of no higher, nature: wheras a state of inheritaunce although it be a frehold in deede, yet it is not called by name, sith it is after more excellent & greater estate. But yee shall vnderstand, that of inheritaūces some be of more amplitude and excellency then other some be; as that inheritāce, which is pure, simple, & without limitacion of what heyres. Which kinde of inheritaunce is called fee simple. But when I make a limitation of what heyres, then it is called fee tayle, of which also be two sortes, as hereafter more at large shalbe declared. Nowe therefore the nature of fe simple is set forth with our accustomed compendiousnes. Fee simple.

Inheritaunce, n... freehould, b... A higher nat... more excellent

Inheritaunce { Fee si... Fee ta...

Of fee simple.

Fee simple is as I sayd, the most ample, and large inheritance that can be in this realme deuised or recognate, as ẏ which a man hath to him and his heires simple, without any further limitatiō; for whether, they be of his owne body begotten, or not, so that they be the next of his kīne, and within the degrees it suffiseth.

So then tenant in fee simple is he, that hath

lands or tenemēts, whether it be by purchase or by discente, to him & to his heyres & assignes for euer. For if a man wil purchase lāds in fee simple, he must nedes haue these words his heires in his purchase, for these be ŷ only words that make the estate of inheritaunce. Therfore if lands be geuen to a man for euer, And no mentiō be made of his heires: he hath ā estate but for terme of his life, because these words his heires do lacke.

Deuise.

Yet neuertheles if a man by his testamente doth deuice lands to another in such place or case where ŷ custome or law wil serue, so to do, though he maketh no mention of Heires, but saith that hee bequeth to such a person, such lands to haue and to hold to him and to his assignes for euermore, here a state of inheritance doth passe; for in testaments the wil & intent of the testatour is to be pondered & not the formall and prescript words of the lawe.

In Testaments, ŷ will, & intent to be followid.

frank mariage.

frank almoigne.

Also these termes in the law, franke mariage, and franke almoigne, ŷ is to say a fre mariage and free almes, do include in thē words of inheritaunce.

Donum feineni et sanguini suo quid sit.

And therefore if I geue lands to a man & my daughter in franke mariage without further addition or mencion of heires, this is an estate of inheritaunce, as shalbe hereafter declared more plenteously. In likewise it is of lāds geuen to an house ecclesiastical in pure & franke almes. Moreouer if lands be giuen to a mā and to his bloud, or vnto him and to his sede, he hath in both cases a state of inheritāce, for in the lesse hee hath a fee taile, in the other a fee simple. For this word sede, and bloude,

and

and such like, do emply wordes of inheritance.

Also if landes be geuen to a man and to his heires males, or females, he hath by this gifte a fee simple, because it is not expressed of what body the issue shal come.

But now it is to be seene who be said a mās heires in the law; ye shal therfore know that my brother or sister by the half bloud, that is to wit by the Fathers side, and not by ẏ mothers, or contrary wise by the mothers, & not by the Fathers, shal neuer be mine heyre nor none that come of them.

The half bloud.

A bastard shall bee no heire.

Neither my bastarde can be mine heire, nor mine owne natural Father, nor Mother, nor graunfather, nor graundmother can be mine heire: For it is a principle & ground of ẏ law that inheritance may lintally discend, but ascend it may not. And therfore if I haue landes in fee simple, and die without issue of my body, my Father cannot be mine heire, but my Fathers brother or sister shal; & thē if my uncle or aunt die seased woute issue, my Father shal haue the landes as heire to mine uncle, & not as heire to me, for that cannot be.

A ground of ẏ law

But it may go from me to mine uncle or aunt wel enough, for that is not called a lineal ascention, but a collateral discent.

Also ye shal understand that lineall discent is when ẏ discent is cōueied in the same line of the whole bloud, as grandfather, father, & sonne, and so downe. And collateral discēt is out an other branch, from aboue of the whole bloud, as the grandfathers brother or fathers brother, and so discending.

Liniall & collatrall discent.

And ye shal note, that by the comm on lawe

eldest Son, to haue ye hole inheritaunce.

Realme, ye eldest sonne shal haue the whole inheritaunce, and after him if he haue no issue ye second sonne. &c. Also if I haue no sonnes, but daughters, then shal al the daughters togethers inherit, which be called coperceners; but if I haue no issue at all, neyther sons ne daughters, then shall my eldest brother inheritage succede me; but & if I haue no brother, thē my sisters if I haue any; if not, my vncle, by my father side, if the landes be mine own purchase. And to be short, if there be none in life, of my fathers side, it shall goe to my mothers side; & if there can be found no heire neither by my fathers sid nor yet by my mothers, then shall it reuert & eschete, as they cal it to ye Lord of whom it was holden; for euery lād must needes beholdē, of some Lord, as shal be hereafter shewed. But if lands discend vnto me by my mothers side, thē if I faile of issue, ye lands shal discend only to myne heirs of my mothers side, & neuer to mine heirs of my fathers side; as on the contrary side, if I haue lāds or any hereditamēts by discent from my fathers or his bloud, they shall neuer discend to my heires by my mothers side.

Coparceners.

Eschete.

Diuersitye.

And thus yee see a great difference in this behalfe, betwene purchased lands, and lands which descend from mine auncestour.

If ther be three sonnes, and the middle sonne purchase lands & die without issue, the eldest shall haue the lands and not the yongest.

A groūd of ye lawe

Also it is a principle in our law, that none can be mine heire of lands that I holde in fee simple, onlesse he be mine heire by ye hole blud that is to say, both by father and mother; for if

a man

a man hath issue two or three sonnes by sondry wiues, and the eldest purchaseth lands in fee, and dieth without issue; his halfe brethren, I meane those that be not his brethren both, by the fathers side, & mothers side, shal not haue the lande, but it shall go to his vncle.

Likewise if a man hath by his first Wyfe a sonne and a daughter, and by his second wife another sonne; and the sonne by the first wife, purchaseth lands in fee simple and dieth without issue, ỹ sister german, that is to say, both by father and mother shall haue the landes by discent as heire to hir brother, and not the yonger brother; forasmuch as the yonger brother cannot in this case bee heyre to his elder brother, because he is no brother germaine vnto him. Otherwise it is of lands or other hereditamẽts entailed as shalbe hereafter specified. Also if a man, be seised of lands in fee simple, and hath issue, a son & a daughter by one wife; and after the death of his first Wyfe, a son by another wife, and dyeth, and the eldest sonne entreth into the landes, & after he dieth without lawful issue of his body; ỹ daughter shall haue the landes, and not the yongest sonne; & yet the yongest sonne is heire to his father, but he is not so to his brother. But if in this case the eldest sonne had not entred after the death of his father, but had died before any entre made by him, then shall not the sister germaine enter, but the yonger brother is heyre, to his father, because ỹ eldest brother was neuer in actuall possession, which is requisite to the person that claimeth to be heire collaterally.

But to the iniall heires, it suffiseth that ỹ auncel

auncestour should haue ben heyre if he had liued. I meane as thus: A man seased of lands and hath issue a sonne and a daughter by one wife, and afterward a sonne by another; hee dieth, and after his death the eldest sonne entereth not but dyeth without issue before hee can make actual entre, here in this case his sister shal not haue ye lands as heire to hir brother because her brother was not in actuall possessiō, but the yōger brother shal haue them as heyre to his father; yet if ye eldest son in ye case had left behind him issue of his body, whether it had ben son or daughter, this issue not wstāding, that the father of the issue was neuer possessed either actually or in ye law, shal haue ye lands & shal conuey his discent from his father; the cause hereof is this, that the son or daughter is lyneal heire, wheras the brother, sister, vncle, aunt &c be heires collateral; and so ye shall obserue a diuersity.

Diuersitye.

I cal an actual possession, when a mā entreth in dede into lands which be to him descended: but a possession in law is called when lands he deseended to a persō, as he hath not yet really and actually entred into them. For not wstāding ye he is not in actual possessiō, yet he is possessed in the law, that is to say, in the eye, & consideration of ye law he is deemed to be possessed, forasmuch as he is tenāt to euery mans actiō ye wil sue for ye said lands; or els assuredly ther should insue an intollerable incōueniyence, as we shal more copiously open in an ather place. Ye shal further more vnderstand ye this word inheritance is not only to be accōmodate & aplied to ye which cōmeth by discent

Hereditas quid sit.

or suc-

or succession from a mans auncestours or predecessours, but also to euery purchase in fee simple, or fee tayle. Inheritance what.

And note that a man can haue no larger or greater estate then fee simple.

Of fee tayle.

YEe shal vnderstand that before a certaine statute called the statute of Westmin. secōd ther was no state taile but al was fe simple, either purely, that is to say without condition, or at the least way cōdicionally as appeareth by the pretēce of the sayd statute, but now sithens the promulgating of the statute diuers formes of state tayle haue risen. West. 2. Cap. 1. Deuision

Fee taile is when it is prescribed and lymitted in the gift, what sort of heyres & by whō engendred shal inherit.

As for example, I geeue landes to a man and to his heires & go no further, this is a fee simple: but if I make a limitation, and ad of his body begotten, now it is a fee taile, that is to say, a fee or inheritaūce limmitted, prescribed, determinate or assigned.

So that if I geue lands to a man and to hys heyres, he hath fee simple, but if I geue lands to him and to his heires of his body lawfully begotten, he hath but a fee taile; forasmuch as I appoinct, limit, prescribe, and expresse what heires they shalbe, and for lack of such heires the gift shalbe expired and worne out, and ỹ lands shalbe reuerted agayne to the giuer or his heires.

But yee must obserue and note that there be two kinds of fee taile. There is a generall

tayle

tayle and there is specyal tayle.

Generall tayle. Fee taile general is, as where lands be geuen to a man and to his heyres of his body begotten, without any mencioning and expressing by what woman they are begotten.

And therefore if a man be tenant in the general tayle of lands, and taketh a wife & hath issue by hir and she dyeth, & afterward he taketh another wife, of whom he hath also other issue, here either of these issues is inheritable to this land intayled. But if I expresse in the gift by what woman ẏ heires shalbee procreat & ingendred, then it is one especiall tayle, as for example to make the thing plain, if lands be geuen to a man & to the heyres of his body lawfully begotten by Margaret his wife, this is an especial tayle, for the issue of him begotten by an other woman shall neuer inherite by force and vertue of ẏ tayle. Likewise it is if lands be geuen to a woman & to ẏ heires of hir body lawfully begotten & shew not by what man, this is a general tayle, but if I go forth and say by such a man her husband, then it is an especial tayle.

Especial tayle.

Also if I geue landes to a man, and to his wife, & to the heyres of their two bodies lawfully begotten: this is an especial tayle, aswel in the husband as in the wyfe.

Semblable it is if a man geueth land to another man with his daughter or kinswomā in franke mariage, this word frank mariage implieth a state tayle especially: & in this case as wel the man as the woman hath estate in the special tayle.

Franke mariage.

But if I geeue lands, to a man and to such a woman

a woman, & to his heyres that he hath begot of her, here the woma hath estate but for term of her life, & the husband an estate, in the special tayle; and likewise it is in the womans behalfe, as if I geue lands to a man & to his wife and to her heyres of her body of her said husband engendred, he hath an estate but for term of life & she an estate in the special taile. But in both cases, if I had sayd to heires and not to his or her heyres, then should eyther of them haue had an estate in the special taile because this word heires is as well referred to the one as to the other.

Yee shall also understande, that if lands be geuen to a man and to the heires males of his body, this is estate tayle, and in this case the heyre female shall neuer inherite, Discente by heires males.

Also if a man hath issue and dyeth and lan des be genen to a him and to his heires of his body begotten, this is a good state tayle, although the father were dead at the tyme of the gift. Finally it is to be noted that of lads which a man hath in fee simple, the possessiō of the brother shal cause the sister germayne ỳ is to say, ỳ sister both by the fathers syde & mother to inherite, & in this case ỳ brother by the half bloude shall not inherite as heretofore was said; but of lands which be entailed, otherwise it is, Therfore if man be seased of landes in the general taile and hath issue by his first wife a son and a daughter, and also a son afterward by another wife and dieth, and the eldest son entreth into the landes and after dieth, the sister germayn to ỳ eldest sonne shal not haue the lands, but the yōgest brother

brother of the half bloud; because whosoeuer shal inheryt lands or any other hereditamentes in tayle, must claim them as next and immediate heire not to him that dieth last seased of the landes, but to him whom ẏ lands wer first geuen vnto which in the case before remembred: is the sonne and not the daughter.

Diuersitye. Thus ye shal marke a great diuersity betweene the forme of succession in the lands of fee symple, and the former in fee tayle.

¶ Tenaunt after possibility of issue extinct.

When lands, tenements or other hereditaments be geuē to a mā and to his wife, & to the heires of their two bodies lawfully begottē, it in this case either of them chaūce to die before they haue issue betwene them, he or she ẏ ouerliueth, is stil tenant in tayle, but without possibility of any issue ẏ can be heire to these lāds or hereditamets thus intayled, for this cause he or she thus ouerliuing is called tenant after possibility of issue extinct, for in such a tenant is al possibility of issue ẏ may be inheritable to these lads by force of the gift in taile vtterly extinct or quenched, and by his or her death state tayle shal expyre seale & be abolished for euer, and shal reuert and turne again to the geuer or donour from whence it came.

Disparnishable waste. Yet forasmuch as tenaunt after possibility of issue had ones an inheritaunce in him, he shal not be punished by an action of wast, though

thoug he maketh neuer so much waste in the landes and tenementes, wheras yet in effect he is but a tenaunt for terme of life.

But if this tenaunt doth alienate in fee, such landes, he in the reuersion may enter for the forfayture. Forfayture.

And this for estates at this present time shal suffice. But to the intēt that ye may the more easely comprehend al the members of the deuision of possessions & estates which men may haue in landes, tenementes, or other hereditamentes, it shal not be euill done to set forth as it were in a table before youre eyne the deuision therof, which is this

1. Fee simple.

- State of inheritaunce,
  - Fee tayle
    - Generall.
    - Speciall
    - After posi.
  - Fee simple
    - Curtesie of England.
    - Dower.
- After the common lawe.
- Franke tenement.
  - 2. Franke tenaut onely
    - Terme of life.
    - Terme of others lyke.
- Possession
  - After the custome.
    - Which is deuided in like maner as frāke tenement by the common lawe.

3. Chatel,

- Real
  - Terme of yeares.
  - Ward of landes.
  - at will.
- Personall
  - Al goodes mouables.

Partition. Coperceners.

Of perceners or other coheyres.

HEtherũto I haue made a cõpendious and shorte declaration of estates of all sortes. But where I said. that among sisters there is no prerogatiue of preminence concerning the inheriting of their aũcestours lands, but ẏ they shalbe altogether inheritours & make as it were. but one heire it is expedient to make a further declaratiõ & processe in this behalfe and to shew how and in what maner this partition shalbe made.

Diuision. Perceners at ẏ common law. Perceners by custome.

But yee shall vnderstand, that there be besyde perceners at the common law, which be only sisters, also perceners by custome, which is amongs brothers, contrary to the course of the common law; and this custome is in some places of Kent, & in other places wher lands and tenements be of the tenour of Gauelkynd.

Yee shal therfore know that when a man is seased of land in fee symple or feetayle, and hath no issue but daughters, and dye, and the daughters do entre into the lãds thus discended vnto them, now they be called perceners or coheyres, and by a writ called de particione facienda brought by one of theim agaynst the others, they shalbe constrained by the law, to suffer an egal particiõ to bee made of the landes betwene them.

Writ de patricione facienda.

Particiõ in diuers maners.

Now partition may bee made in sondry wayes. One way is, when they themselues do make particiõ betwen them of ẏ whole heritage, and do agre vnto the same, and do enter euery one into her part so alotted vnto hir

1.

Another way is, when by al theyr agreement and cõsent one commõ frend doth make ẏ particion. In which case ẏ eldest sister shal

2.

haue

haue the first electiō, and after hir, the seconde sister and so forth. But if they agree that the eldest sister shal make the partition, & shee maketh it, then the eldest shall not chose first but shall suffer all hir Sisters to chose before hir, as it is thought.

There is also an other forme of partition, which is egally to deuide the Landes into so many partes as there be coheires or parceners and to wryte euery parte so deuided in a seuerall scroule of paper, and so put the sayd scroules in a bonet, or to enclose them seuerally in balles of waxe, & then the eldest sister to chose which bal she wil or to put hir hand in to the bonnet and take a scroule, and to holde hir to hir chaunce and alotment, and consequently euery sister after an other. 3. by lottery.

And yee shal note, that partition by agreement may aswel be made by nude and bare wordes, without writing, as by writing. Note.

And if any of the parceners will not suffer any partition to be made, then may the other ẏ would haue partitiō, purchase a writ called de partitione facienda, agaynst them ẏ refuse partition, to cōpell the same to suffer partition to be made accordingly, & than by the iudgement of the court ẏ shyriffe by the serment and oth of twelue men shall make partition betweene them, and shall assigne to ech sister hir portion as he shal think good, without giuinge any election or choyse to the eldest. A writte departitiõe facieda.

And if two Manours or meeses happen to discend to two sisters & the manours be not of egal value, then may she, to whom ẏ lesse Maner or meese is alotted, haue assigned vnto hir

Distresse of cõmon right.

a rent proporcionably out of the other maner for the which Rente shee and hir Heyres may strayne of common right, though they haue no writing thereof.

Finally, yee shall vnderstande, that if a man be seased of lands in fee symple, and hath issue two daughters, and geueth with one of hys daughters to another man that shall mary hir, the third or fourth parte of his lande in franke mariage and dieth, if in this case the daughter that is in this wise bestowed & aduaũced, wil haue hir portion of hir fathers Heritage, shee must put hir land geuen vnto hir in frank mariage in Hochepot newe agayne. I meane she must be contented to suffer hir sayd lands to be commixte and mingled with the other lades of which hir Father died seased in fee simple, so that an equal diuisiõ may be made of ỹ whole, or else she shall haue no part of those landes of which hir Father died seased. But if hir Father had made vnto hir out a common gifte in taile, or feoffement in fee, she should not nede to put hir landes in Hochpot, but may very well kepe and retayne them still, & also haue as good part of the rest of the lands of which hir father died seased, as hir other sister or sisters haue.

Hochepot

Franke mariage.

For a gifte in franke mariage, is accõpted, the most free and most liberal gift that can be, and that gifte which the Lawe iudgeth to be onely for the aduauncement, and bestowinge of the daughter; whereas feoffementes in fee simple, and also common giftes in tayle be accustomably for other causes, & for the aduaũtage rather of the giuour, or feoffour, then of the taker.

Also if parteners make partition of landes

being

being within age, that partition is voyd.

And if parceners in fee ſimple make partition, and the part of the one is beter then the other being of ful age of xxi. yeares, then the partition is good and cannot be defeated; but if it be of landes in fee tayle, the one parte beynge better then the other, that partition maye bee defeated by their heires.

More of Coparceners, in the next of Jointenauntes.

Of ioyntenauntes.

HItherunto verelye haue wee ſpoken of Coheyres called Parceners of the common law, which as is heretofore declared do come to landes and other hereditamentes ioyntly by the courſe, operation, and act of the law. Now ſhal wee ſpeak ſomwhat of theym whiche eyther ioyntly or ſeuerallye come to landes, tenements, or other hereditamentes, by their owne purchaſe, acte procuremente and worckinge. And of theſe they ỳ come to them by ioint, title, way, or colour, be called iointenantes; but they that com by ſeueral tytles, wayes, or colours, lands or tenementes, be named tenantes in common.

Tenauntes incommon.

So then if a man being ſeaſed of landes or tenements, or other hereditamentes, ſhal thereof enfeoffe two, three, four, or more to haue and to hold them in fee ſimple, fee talle, or for terme of their liues, or for terme of anothers life; theſe perſonnes ſo enfeoffed and ſeaſed bee called Jointenauntes. Alſo if twoo or moe doe expell and diſceiſe another man of any landes or tenementes to their owne behoue and vſe, theſe diſſeiſours and wrongedoers are nowe

become ioyntenaunles, because, by their own act they come ioyntly to this lande. But if they do disseyse another man to the vse ioinye of one of them, in this case they be not ioyntenauntes but he to whose vse the disseisine is made, tenaunt alone of the same, and the other haue nothing in the tenauncy, but be called ayors or conductors in the disseisine.

Disseisin. And ye shal vnderstand, what a disseisin is properly, wher a man entreth into any lands or tenements there wher his entry is not lawful, and putteth out him which hath the freehold of the same.

Suruiuour taketh place ius accrescendi. And yee shal furthermore know, that the nature of iointenauncy is, that he which suruiueth and ouerliueth the other, shall haue to himselfe alone the whole & entire tenauncy, according to that estate which he shoulde haue had if the ioinsture had bene continued: as (for exaumple) three iointenauntes bee of landes in fee simple, and the one hath issue and dieth, in this case the two whiche do ouerliue their felow, shall haue the whole landes betwene them, & the issue of him that is departed get nothing. And if the second iointenant hath also issue and die, the third whiche hath ouerliued them both, shal nowe haue and enioye the whole, to him and to his heirs for euermore.

Diuersitie. But other wise it is of coheires whiche in our law bee called parceners. For if there bee iij, such coheyrs and parceners, & before anye partition made, the one haue issue a sonne or a daughter and dyeth, his portion shal descende and fal to his childe, and shal not turne amongest the other ioynt heires or coparceners.

My mootheus Case, for her howse in Hill Street.

How

How beit if ſutch pacener or coheir had dyed without iſſue, thē ſhould his portion haue diſcended to his coheyres. But howe not by force of ſuruiuour or ouerſtuinge, which in latin is called ius accreſcendi: but by very diſcent; for where any of the coheires dye without iſſue, who can be heire to him or hir ſo dying: but ye other coheire to him or hir ſo dying, or the reſt of the coheirs if there be many. the right of Suruiuour

And like as this right of ſuruiuer or ouerlyuinge holdeth place amongſt ioyntenauntes of Landes and tenemeutes, ſo in like maner it holdeth place amongs them which haue ioynt eſtate or poſſeſſion, with others of chatelles, whether they be reall or perſonall. As (for exāple) if a leaſe of lands or tenements bee made to many for tearme of certayne yeres, ye ouerliuer or ouerliuers ſhall haue ye whole during ye terme by force of the ſame leaſe. So of chatels perſonal, if an horſe, oxe, graine, or other ſutch perſonall chatell be geeuen to many, he whych ouerliueth ſhal haue ye ſame alone. In ſemblable wiſe it is of debts & duties. Or if an obligation be made to many for one det, & of ſome other couenaunts and contracts. Nota. Ioyntenaunts of real or perſonal goods.

Alſo ſome ioyntenaunts may bee, which may haue ioynte eſtate and bee ioyntenauntes for terme of their lyues, and yet haue ſeuerall inheritāces. As where lands be gieuen to two men, and to the heires of their two bodies engendred, in this caſe theeſe two perſons haue ioynt eſtate for terme of their two liues. And yet they haue ſeuerall inheritances. For if the one haue iſſue and dy, the other that ſuruiueth ſhal haue al by force of ye ſuruiuour for terme Ioyntenaunts: of ſeueral inheritances.

of his lyfe. And if he that suruiueth hath also issue and die, than the issue of the one shal haue the halfe of the lands, & the issue of ỹ other shal haue thother half, and they shal hold the lande betwene them in common, & shall not be ioyntenauntes, & tenaunts in common: & the cause and reason why such donees in such cases haue ioynt estate for terme of their liues, is for that at ỹ beginning the lands were giuē to thē two, which wordes without more sayinge, make a ioynt estate to them for terme of their liues; for if a man wil let lād to another by dede or without dede, not making mention what estate hee hath, and of this maketh liuery of seisin, in this case ỹ leasee shal haue state for term of his life. And if he haue no liuery of seasin, he is but tenaunt at will. And so forasmuch as the lands were giuen vnto them, they haue a ioynt estate for terme of their liues. But the cause why they haue seuerall inheritance, is this: for that they cā not by possibility haue an heire betwen thē engendred, as a man & a woman may haue, wherefore the law wil that their estate & their inheritaūce shalbe such as reason wil, after the forme and effect of the wordes of the gifte, and that is to the heires that the one engendred of his body by and of his wiues, & to the heires that the other engēdreth of his body by and of his wiues. So it behoueth by necessity of reason, that they haue seuerall inheritaunce. And in such case if the issue of one of them after the death of thē both doth die, so ỹ he hath no issue aliue of his body engendred, then the donoure which gaue the lande, or his heires may enter in the halle, as in his reuersiō though the other hath

Tenants in cōmon.

hath issue aliue. And the cause is, ỹ forasmuch as the inheritaunces be seuerall, therfore the reuersiō in the law is seuered, & the suruiuour of the issue of the other shal hold no place to haue the whole. And as it is said of males, in ỹ same maner it is where lāds be geuen to two females & to the heires of their ij. bodies begotten.

Suruiuour holdeth no place.

Also if lands be geuē to two and to the heyres of one of them, this is a good ioyntenauncye, and the one hath a freeholde, and the other hath a fee simple, & if he which hath fee simple die, he that hath the freehold shal haue ỹ whole by the suruiuour for terme of his life.

And if these two ioyntenaunts ioyne in a gifte in the taile to a straūger, reseruing a rent to him that hath a state but for his life, this reseruation is voyd to make a tenure. Likewise it is where tenementes be geuen to two, & the heires of the body of one of them engendred, the one hath freeholde, and the other in fee tayle.

Rent charge graunted by a ioyntenaunte.

Note, if two ioyntenauntes bee seased of estate of fee simple, and the one graūteth a rent charge by his deede to another, out of ỹ which to hym belongeth, in this case during the lyfe of the grauntour, the rent charge is good and effectually, but after his disease ỹ rent charge is voyde, as to charge the landes, for he ỹ hath the land by the suruiuour, shal hold al the land discharged; the cause is for that he that suruyueth claymeth to haue the lande by the suruyuour and not by discent of his fellow. But otherwise it is of perceners or coheires, for if ther be ij. perceners in fe simple, & before any peticiō made, ỹ one chargeth that, that to him belōgeth by his dede of a rent charged & dieth ỹ

Diuersitye.

out issue, here that which to him belōgeth discendeth to the other parcener, and in this case the other parcener shal hold ẏ Land charge because he cōmeth to the halfe by discent as heir.

Deuyse by testament.

Also if there be two ioyntenauntes in fee simple, within one borough, where the landes and tenemēts within the same borough be diuiseable by testament, if the one of the said ioyntenātes deuyse that which to him belongeth, by testament and die, this deuyse and legatiō is voyd. And ẏ cause is, for ẏ, that no deuise may take effect till after the death of the testator, which bequeathed & deuised the same; & by his death al the land incontinent commeth by the Lawe to his fellow that suruiueth, by the suruiuour, which neither claymeth nor hath any thing in the land by the deuise, but in his owne ryght by the suruiuour after the course of the law & for this cause such deuise is voyde.

A ground of ẏ law.

But otherwise it is of parceners seased of tenements deuiseable in such case of deuise, for the cause aboue remebred. Also it is commonly sayd, that euery ioyntenaunt is seased of the land that he holdeth ioyntlye parmy and partout, that is throughout and by al. And this is asmuch to say, that he is seysed by euery parcel and by all; which saying is true, for in euery parcel and part & throughout al the landes and tenementes he is ioyntly seysed with hys fellow. And therefore if the one ioyntenaunte make a feoffement to his companiō, ẏ is voyd, because he cā make no liuery of seysin to him. And if two ioyntenauntes be seysed of certain landes in fee simple, & thone letteth ẏ, ẏ to him belongeth to a straūger for terme of xl. yeres & dyeth

dyeth within the tearme, in this case after hys death the lessee may enter and occupy the halfe to him letten during the sayd terme, though ỹ lessee neuer had possession of it in the life of the lessour by force of the lease. And the difference betwene the case of the graũt of a rent charge and thys case is this; that in the graũt of a rct charge by a ioyntenant, the landes or tenementes abide alwaye as they were afore without that, that any hath right to haue parcel of ỹ tenements but themselfe, & the tenements abide in such plight as they wer before the charge. But where a lease is made by a ioyntenant to another for terme of yeres incontinent by force of the lease, the lessee hath right in the same land, that is to say, of all that, that to his lessour beelongeth by force of the same lease duringe hys terme And if the lessour in this case die, the other ioyntenant shal haue the rent or term duringe the saide terme, because the reuersion is come to him by suruiuour. Finally if a ioynte estate be made of land to the husband and wife, and to the third personne, in this case the husband and the wife haue not in the law in their right but the halfe, and the thirde person shall haue asmuch, as the husband and ỹ wife haue that is to say the other halfe.

Diuersity betwene a graũte of a rct, and lease.

And the cause is, for that the husband and ỹ wyfe be but as one person in the eye of ỹ lawe, and it is here in like case as if estate bee made to two ioyntenaunts where the one hathe by force of ioynture the one halfe, & the other the other halfe. In semblable wise it is where estate is made to the husband & wife, & to other two men, in this case the husband and the Wyfe

haue

haue not but the third parte, and the other two men the other two partes.

Also if two or three together disseiseth another of landes & tenementes to their own vses, then suche disseisours be called ioyntenaunts. More shalbe said of this matter touching ioyntenaunts in the next chapiter,

Tenaunts in common. or, pro indiuiso.

TEnaūts in cōmon (as I said before) be they that haue lands or tenementes in fee simple, fee tayle or for terme of lyfe, which haue suche lands and tenementes by seuerall title, and not by ioynt tytle and none of theim knoweth that which is seuerall to him. And in this case they ought by the law before partition made betwene them, to occupy suche lands and tenements in common for vndeuided to take the profites in cōmon. And because they come to suche lands and tenementes by seuerall titles, and not by one self ioynt title, and their occupation and possession in the same is among them in common, they be called tenauntes in common, or tenauntes per indiuiso. As for example, if a man infeoffe .ij. ioyntenauntes in fee simple, and the one of them alienate that that to him belōgeth to another in fee, nowe the other ioyntenaūt and he to whō the alienatiō was made be tenaūts in cōmon, for that they be seased of suche tenementes by seuerall tytles: for the one commeth to the one halfe by the feoffement of the ioyntenaunt, and the other hath the other halfe by force of the firste feoffement made to him and to hys firste felow, and so they be in by seuerall titles & by

seue

fee, for simple

seuerall feoffeementes.

And it is to wit, that when it is sayd in any booke, that a man is seised in fee without more saying or addicion, it shalbe vnderstād fee simple; for it shall not be vnderstand by such word in fee, ỹ a man is seased in fee taile, except ther be put in such addition tayle.) Diffinitti-tion of fee only.

Also if three ioynteuaunts be and the one of them alieneth that which vnto hym belongeth to another in fee, in this case the alyenee is tenaunt in commō with the other. ij. ioyntenaūtes. But yet ỹ other two ioyntenaūtes be seased of the two partes ioyntly; and of these two parts, the surviour betwene thē holdeth place. Joynte-naunts.

Also if there be two ioyntenauntes in fee, & the one geueth that, that vnto him belongeth to an other in the tayle, the donee and the other ioyntenaunt be tenaunts in cōmon. But if the landes be geuen to two men, and to the heyres of their two bodies engendred, the donee haue ioynt estate for terme of their lines, and if ech of them haue issue & die, their issues shall holde in common.

Also if landes be giuen to two men to haue and to holde the one halfe to the one, and to his heyres, and the other halfe to the other and to his heyres, they be tenauntes in common.

Also if a man seased of certain lands enfeoffeth another in the halfe of the same land, wout any speach of assignement or limitation of the same halfe in seueralty at the time of the feoffement, then the feoffe and ỹ feoffour shall hold their partes of the land in common.

And as it is of tenaunts in common of landes or tenements in fee simple or fee tayle, eqē

so it is of tenauntes for terme of lyfe. Therefore yf .ij. ioyntenauntes be in fee & the one letteth to a man yt vnto him belongeth for terme of life, and the other ioyntenaunt letteth that which to him belongeth to another for terme of life also, these two Leasees be Tenaunts in common for terme of their liues.

Ioynte-nauntes.

Also if a man let landes to two men for terme of their liues, of whom the one grauteth all his estate to an other; then that other tenaunt for terme of lyfe, and he to whom the graunte is made shalbe tenauntes in common, duringe the time that both Leasses be aliue.

Question Note if there bee two ioyntenaunts in fee, and the one letteth all that vnto him belongeth to another for terme of lyfe: the tenāt for terme of lyfe during his lyfe, and the other tenaunte that did not let, be tenauntes in common. And vpon this case a questiō may rise as this. Let the case be that the leassoure hath issue & dieth liuing the other ioyntenaunte his felowe, and lyuing the tenaunt for term of life, the question is, whether the reuersion of the halfe that the lessour hath shal discend to the issue of the lessour, or whether yt other ioyntenant shal haue it by the suruiuour or no. And some haue said that the other ioyntenaunt shal haue the reuersion by the suruiuour, forasmuch as when the ioyntenantes were ioyntely seased in fee simple; though one of theym made estate of that, that vnto hym belongeth for terme of life, and though hee hath seuered the frankftenement of that, that to him belongeth by the lessee; yet he hath not seuered the fee simple.

But the fee simple abideth to them ioyntly as it was

it was before. And so it seemeth vnto them ẏ ẏ other iointenant which suruiueth shal haue the reuersion by the suruiuor; but other haue thought the contrary, and this is theire reasō. Where one of the iointenantes letteth ẏ which vnto him belōgeth to another for term of life, by such lease the franke tenantis severed from the iointure. So that the reuersion that is dependaunt vnto the same franke tenemente, is severed from the iointure. Furthermore if the lessoure had reserued to him a yerely rent vpon the lease, ẏ leassour onely shuld haue the rent: which is a prose that the reuersion is only in him, and that the other hath nothing therin. Also if the tenant for terme of life were impleded & make deasute, after defaulte, the lessoure shal be only here vppon receiued to defend his right and not his fellow: which prooueth the reuersion of the half to be onlye in the lessour, and so consequently, if the lessour dye, liuing ẏ leassee for terme of life, the reuersiō shal discend to the heires of the lessoure, and shal not come to the other iointenant by the suruiuour after these mens opinions; yet it is doubt.

Resceite

Quere. Doctours dubi

But in this case if the ioyntenant, that hath the frank tenement, haue issue and die, liuinge the lessour and the lessee, then it semeth ẏ the issue shal haue the halfe in his demesne, as of fee by discent; for asmuche as the franke tenement may not by nature of the ioynture be annexed to a reuersion, and it is certayn that hee that letted, was leased of the halfe in his demesne as of fee, and that none shall haue anye iointure in his franke tenement. So that this shal discend to his issue.

If

Release

If three ioyntenantes be, and the one releaseth by his dede to one of his felowes al the right he hath in the land, then hath he to whom the release is made the third part of the landes by force of the release, and he and his felow shal hold the other two pattes ioyntly. And as to the third part, that he hath by force of ỹ release, he holdeth it ẅ himself & his felow in cõmon.

And it is to wit, that somtyme a deede of release shall take effecte, to put the state of him ỹ made the release, in him to whom the release is made, in case aforesayd.

Also if a ioynt state be made to the husbande and wife and to a third person, and the thirde person releaseth his right that he hath to the husbande, then hath the husbandr the halfe which the thirde parson had, and the wife of this hath nothing. Semblably if ỹ thirde person had released to the wyfe, not nammge the husband in the release, then shoulde the wife haue the halfe that the third person had, & the husbad nothing of this but in the right of his wife: because such release shal enure to put ỹ state to him to whom it was made, of al that belongeth to him that made the release. Again in some case a release shal enure & serue to put al the right that a man hath that made that release in him to whom it is made. As a man being seased of certain lands is disseised by two disseisours, if the person disseised by his dede release al his right to one of the dysseysoures then he to whō the release is made shal haue and holde al to him alone and put out his felow out of the occupation of it. And the cause is for that the two dysseysours were seased by wrongе

Disseisours.

wrong by them done agaynst the law, & whan one of thē getteth ỹ release of him ỹ had righte to entre, this right resteth in him to whom the release is made, & in such plite as if he that had the right had entred, and enfeoffed him of the same. And the cause is, for that he that before had an estate by wrōg, hath now by the release a rightfull state.

And in some case a release shall enure and take effecte by way of extinguishment, & such a release shall helpe the ioyntenaunt to whom the release was not made, as wel as him to whō it is made; as if a man be disseysed, and the disseisour maketh a feoffement to two men in fee, if the person disseised release to one of the feoffees in fe by his dede, thē such reales shal enure to both the feoffes, bicause ỹ feoffes haue estate by the law that is to say, by the feoffement and not by wrong done to any other.

Release by way of extinguishment.

And in like manner if the disseisour make a lease to a man for terme of lyfe, the remainder ouer to another in fee; if the disseysie will release to the tenaunt for terme of life al his right, this release serueth as wel to him in the remain der, as the tenaunt for terme of life. And the cause is for that the tenaūt for terme of life cōmeth to his estate by the course of the law, and for this cause the release shall enure and take effect by way of extinguishment of ỹ right of him that hath released. And by this release the tenaunt for terme of lyfe hath no greater estate then he had before the release made vnto hym; and yet the right of him that released is al vterly extincte and gone. Wherefore for asmuch as such release cānot enlarge ỹ state of the tenaunt

A release shal enure to him in ỹ remainder.

tenaunt

naunt for terme of lyfe, it is reason that it shall serue him in the remaynder.

Also if there be two parceners, and the one alieneth his part to an other: the other parcener and the alience be tenauntes in common.

Tenauntes in cōmō by tytle of prescription.

Furthermore tenauntes in common may be by title of prescription if the one and his auncestours or they whose estate hee hath in the halfe, haue holden in cōmon ꝧ same half with thother tenaunte that hath the other halfe, and with his auncestors or them whose estate hee hath as vndeuided, time out of mynde.

Actions seuerall.

And ye shal marke that in some case tenants in common ought to haue of their possessions seuerall actions, & in some case they shall ioyne in one action: for if there be two tenauntes in cōmon, & they be disseysed, they ought to haue against the disseisour two assises and not one assise. For euery of them ought to haue an assyse of his halfe, because they were sealed by seueral titles; but otherwise it is of ioyntenātes, for if ther be yr. ioyntenātes & they be disseised, they shal haue in all their names but one Assise, because they haue but one ioynt tytle.

Assise.

Also if there be three ioyntenauntes, of whom the one releaseth to one of his fellowes all the right he hath, and afterward the other two be disseased of ꝧ whole; in this case they shal haue in both their names one assise of the ij. partes. And as to the thyrd part, hee to whom the release was made ought to haue thereof an Assyse in his own name, because as to the thyrd parte he is tenaunt in common.

Diuersity

Also as to sue actions that touch the realty, there is a diuersity betwene parceners, that in diuers

in diuers diſcentes, and tenaunts in common. For if a man ſeaſed of certayne Landes in fee, hath iſſue two daughters and die, and they enter into the lands as coheyres, and ech of them haue iſſue a ſonne & die without particiõ made betwene them, ſo that the one halfe diſcendeth to the ſonne of one percener, and the other half to the ſon of the other, and they enter & occupy in cõmon, & be diſſeaſed, in this caſe they ſhall haue in their two names one aſſiſe. & not two aſſiſes. And yet ỹ cauſe is though they come in by diuers diſcentes, yet they be coheyres, and percener. Alſo if ii. tenants in common in certaine lands in fee, giue the ſame to another mã in the tayle, or let it to another for term of life yelding annuity or certaine rent, or a pounde of Peper, or an hauke, or an horſe, and they bee ſeaſed of theſe ſeruices; and afterward all the rent is behinde, and they diſtrayne for it, and ỹ tenaunte maketh three reſcous, in this caſe as to the rente and the pound of Peper, they ſhal haue two aſſyſes, and as to the hauke and the horſe but one Aſſyſe. And the cauſe why they haue two aſſyſes as to the rent and pounde of Peper is, for that they were tenaunts in commõ by ſeueral titles, & when they made a gift in the taile or leaſe for terme of life, ſauing and reſeruing to them the reuerſion and yeldynge to theim certaine rent: thus reſeruation is incydent to their reuerſion. Reſcous

And becauſe their reuerſion is in common, and by ſeueral titles, euen as their poſſeſſion, was before, the rent and other things which may be ſeuered and which were to them reſerued vpon the gift or vpon the leaſe which be incy-

dent by the lawe to the reuersion, therfore such things so seuered be of nature reuersion.

Plaint in assyse.

Wherfore it behoueth ỹ the rent & that pound of Peper which may bee seuered to bee then in cõmon by seuerall titles. And of this they shal haue two Assises, & euery of them in his assise shall make his plaint of the halfe of the rent, & of the halfe of the pound of Peper. But of the hauke and the horse, which can not be seuered, they shal haue but one Assise, for it wer an absurditie & thing inconuenient to take a plaint in Assise of the half of an Hauke, or of the half of an horse. In like maner it is of the other rẽtes and seruices ỹ tenaunts in common haue in ground by diuers titles.

Personal actions.

And ye shall vnderstand that concerning action personals, tenauntes in cõmon ought to haue them ioyntly in al their names, that is, to say of trespasse or of offences that touch their tenements in common. as of breaking of their houses, breaking of their cloases, and pastures wasting and defouling of their grasse, cutting of their woodes, and of fishing in their ponds and such other, and they shall recouer ioyntly

Damage.

damage, because, the action is in the personalitie and not in the realtie.

Tenãts in cõmon shal haue one actiõ of det.

Also if tenauntes in common make a lease of their tenementes to an other for terme of yeres, yelding vnto them yearely a certayne rente, if the rente be behinde, they shal haue one action of det against the lessee and not diuers actions, because the action is in the personalitie. But in auoury for ỹ said rẽt, they ought to be seuered, because it is in the realty, as be assises.

¶ Tenaunts in common of chatels.

It is

Chatels.

IT is to be knowen ye as ther bee tenauntes in commō of landes or tenements: so ther bee tenantes in commō of possession and property of chatel as wel reall as personal, Of real as if a lease be made of certayne lands to two men, for terme of xx. years, and when they be therof possessed ye one graūteth that vnto him belongeth during the term to another, he to whom the graunt is made, & the other shal hold or occupy in common.

Joyntenantes of award.

Also if two ioyntenaūts haue the warde of the body and of the lands of an heire within age and the one of them graunteth to another that ye vnto him belongeth of the same ward, then he to whō the graūt is made, & the other ye graūteth not, shal haue and hold it common.

Of chattels personalles, as if ij haue a ioint estate eyther by gift or by buying of an horse or of an oxe, or such like, and the one of theym graunteth that vnto him beloneth, here shall the graūtee and he that graūted not haue and possesse such chatel personall in common. And in such where diuers persons haue chatelles reals or personals in cōmon and by diuers titles if one of them die, the other that suruiueth shal not haue his fellowes part by ye suruiuoure & the executors of him ye dieth, shall hold and occupy it with him that suruiueth in like forme as their testator did, or ought in his life, forasmuch as their tytles & rightes were seueral.

Also in the case aforesayde, if two haue estate in cōmon for terme of yeares, and the one doth

occupy all and put the other out of his posses-
sion and occupatiō, then shal he that is put out
haue against thother a writ de Ejectione firme
for the halfe. In semblable maner where two
hold the ward of land or tenements durynge
the nonage of a child, if one shal put out the o-
ther of his possession, he that is out shal haue a
writ de Ejectione custody of the halfe, because
these thinges be chatels reals and may be ap-
portioned and seuered. But no action of tres-
passe lyeth for the one against the other (as for
example, Quare clausum suum fregit & herbā
suam concalcauit et consumpsit, nor such lyke
actions) forasmuch as ech of them may enter
and occupy in common. But if two be possessed
of chatels, personels in common by dyuers ty-
tles as of an horse. or an oxe, cowe, if the one
take it al to himselfe out of the possession of the
other, the other hath none other remedye, but
to take it againe fro him that hath don him the
wrong, when he may see his time.

A writte de ejectione firme.

De ejectione custody.

remedy by action at Lawe.

In like maner chatels reals, whych maye
not be seuered, as in the case aforesaide. Where
two be possessioners of a warde of the body of
a child within age, if one shal take a childe out
of the possession of the other, the other hath no
remedy by any action at the lawe, but to take
the child out of the others possession, when hee
seeth his tyme.

Fourme of pleading.

Finally, yee shal vnderstand that when a
man in pleading and declaring his cause wyll
shewe a deede of feoffement made vnto him, or
a gift in fee tayle, or a lease for terme of lyfe of
any landes or tenements, shall vse his termes
in this wyse, and say, by force of such feoffe-
ment

ment, gyft, or leafe was ſealed. &c.

But where a man will declare or plead a leafe or graunt made vnto him of a chatel real or perſonal, then he ſhal ſay, by force of which he was poſſeſſed.

Of particion to be made by ioyntenants and tenauntes in common, enacted, Anno. xxx. H. viii.

ALl ioyntenauntes & tenants in comō of any eſtate of inheritaunce in their owen rights, or in ye right of their wiues of any lands or hereditaments within this realm of England, Wales or the marches of the ſame, ſhal and may be compelled to make partitiō betwene thē of the ſame which they ſo hold as ioyntenauts or tenantes in cōmon by a writ de partitione faciendi to be deuiſed in the chauncery, in like maner as coparceners are compelled to doe, and the ſame writ to be purſued at the common law. And after ſuch partition made euery of the ſayd ioyntenauntes and tenantes in cōmon ſhal and may haue aide of the other, or of their heirs, to thintent to dereigne the warrancy paramount and to recouer for the rate as is vſed betwene coparceners, after partition made by the order of the common law.

Writte de partitione faciendi.

Ayde prayed.

Item in the. xxxii yere of King Henry the eight, Chap. xxx. It is further enacted that all ioyntenants & tenantes in cōmon which hold ioyntly, or in common for terme of life, yeare or yers, or ioyntenants or tenantes in commō, wher one or ſome of them haue eſtate for term of life or yeares with other that haue eſtate of

occupy all and put the other out of his posses-
A writte de electione firme. sion and occupatiō, then shal he that is put out
haue against thother a writ de Electione firme
for the halfe. In semblable maner where two
hold the ward of land or tenements durynge
the nonage of a child, if one shal put out the o-
ther of his possession, he that is out shal haue a
writ de Electione custody of the halfe, because
De electione custody. these thinges be chatels reals and may be ap-
portioned and seuered. But no action of tres-
passe lyeth for the one against the other (as for
example, Quare clausum suum fregit & herbā
suam consumpsit et consumpsit, nor such lyke
actions) forasmuch as ech of them may enter
and occupy in common. But if two be possessed
of chatels, personels in common by dyuers ty-
tles as of an horse, or an oxe, cowe, if the one
take it al to himselfe out of the possession of the
other, the other hath none other remedye, but
to take it againe fro him that hath don him the
remedy by action at Lawe. wrong, when he may see his time.

In like maner chatels reals, whych maye
not be seuered, as in the case aforesaide. Where
two be possessioners of a warde of the body of
a child within age, if one shal take a childe out
of the possession of the other, the other hath no
remedy by any action at the lawe, but to take
the child out of the others possession, when hee
seeth his tyme.

Fourme of pleading. Finally, yee shal vnderstand that when a
man in pleading and declaring his cause wyll
shewe a deede of feoffement made vnto him, or
a gift in fee tayle, or a lease for terme of lyfe of
any landes or tenements, shall vse his termes
in this wyse, and say, by force of such feoffe-
ment

ment, gyft, or leafe was fealed. &c.

But where a man wil declare or plead a leafe or graunt made vnto him of a chatel real or perfonal, then he fhal fay, by force of which he was poffeffed.

Of partition to be made by ioyntenants and tenauntes in common, enacted, Anno. xxx. H. viii.

ALl ioyntenauntes & tenants in comm̄ of any eftate of inheritaunce in their owen rights, or in ye right of their wiues of any lands or hereditaments within this realm of England, Wales or the marches of the fame, fhal and may be compelled to make partitiō betwene thē of the fame which they fo hold as ioyntenauts or tenantes in cō-mon, by a writ de partitione faciendi to be deuifed in the chauncery, in like maner as coparceners are compelled to doe, and the fame writ to be purfued at the common law. And after fuch partition made euery of the fayd ioyntenauntes and tenantes inc ōmon fhal and may haue aide of the other, or of their heirs, to thintent to dereigne the warrancy paramount and to recouer for the rate as is vfed betwene co-coperceners, after partition made by the order of the common law.

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inheritaunce of freehold in any lands or other hereditaments, shalbe compellable by writte of Partician to be pursued out of the chaunce-ry vpon their cases, to make seuerance & parti-cion of al such lands & hereditamentes as they holde ioyntly or in common for terme of life, or liues, yeare or yeres, wher one or some of them holde ioyntly or in common for terme of life or yeres with other that haue an estate of inheri-taunce of free hold. Prouided that no such par tician nor seueraunce, be hurtful to any per son other then such as be parties vnto the said par tician their executours or assignes.

Of conditions.

FOr asmutch as euerye estate is eyther pure, or conditional, it wer not amisse to make som declaration of the nature and efficacy of conditions. Where-for we shal vnderstand that of conditions, some be actual con ditions, and be called expresse conditions, or cō ditions in deede; & other some be conditions in law, which be called also in latin cōditiones ta cite, siue conditiones implicite, because they be secretly emplied by the law and not expressed.

Diuision

1. Conditions in deede be such as be knit and annexed by expresse wordes to the feoffemente lessee or graunt, either in writyng or without as for example: If I infeoffe a man in certain landes reseruing to mee, and to my heyres so much rent yearely to be payd at such a feast, & for default of payment, that it shal be lawfull for mee to reentre, this is a feoffment vpō cō-

di tion

tion of payment. And here the note of paiment of the rent shall dissolue and vtterly defeate ỹ feoffement: semblable it is of gifts in taile, leases. &c. But if the condition be, that for defaut of paiment of the rent, it shalbe lawful for the feoffour to enter againe into the landes and to holde them till he be contented and satisfied of the rent: this condition not performed doth not dissolue nor vndoe the feoffement, but onely geueth to the feffour an authoritie to retayne the landes (as it were by way of distresse) til he hath leuied the arrerages of ỹ rent. And yee shall well marke and obserue, that conditions be sometime made to be performed on the feoffees behalfe, and sometime on the feoffours behalfe. On the feoffees behalfe, as when I enseoffe you of lands or tenementes vpon condition that you shal do such an act, as to pay vnto me or mine heires such annuall rent. Distresse.

On the feoffours behalfe, as when I make a feoffement vnto you vpon cõdition that if I paye or cause to be payde vnto you before such a day such a summe of money, then it shall bee lawful for me to enter agayne and retayne my lands in my former estate. In this case, he ỹ is the feoffee is called tenaunt in mortgage, which is asmuch to saye as dedgage and it seemeth that ỹ cause why it is so called, is forasmuch as it is doubtful whether the feoffour wil pay at the day limitted and prescribed such summe of money for the redeption of his lands or not. for if he do not, his title or interesse on the lãds thus gaged and oppignorate, is vtterly extinct, and gone without al hope of renuing. Tenaunts in mortgage.

Yee shall also note, that if the mortgagoure

+ byeth before the day of payment, his heyre may redeeme the land very wel euen as wel as his auncestour, that morgaged ẏ land might, haue done, although there be no mẽcion made of heires in the writing.

Also if when the money is lawfully by the morgagoure or his heyre tendred and proferred, & the lessoure refuseth to receyue ẏ same, ẏ feoffour or his heyre may enter, and then hath the feoffee no remedy for his money at the common law. Ye shall vnderstand also, that some conditions be vtterly voyde in the law and of none efficacy, vertue or strength, as if a feoffement be made of lands in fee simple vppon cõdition, ẏ the feoffee shal not aliene or put away ẏ same to none other, this condition I saye is voyde, because the feoffee is restrayned of his whole power that the law geueth in such case vnto him, and which power and liberty, is in manner included in euery feoffeemente, yet I may abridge him of parte of his power, as to condition with him that hee shal not alien the landes to such a person or such. But of giftes in tayle otherwise it is, for if I gieue lands to a man and to the heyres of his body lawfully begotten vpon cõdition that he nor his heyres shall aliene the landes to none other personne, this condition is good and effectual in the law and if he or his heyres contrary to the condition do aliene them, then the geuer or his heyres may verye well enter and retayne the landes for euer, because thys condition shall stande wyth the forenamed statute of Westmin. secundo. wyich prohibiteth sutch alienations to bee made.

remedy Law.

Condicyons voide

Gifte in tayle vpõ condition.

hither

Conditions { repugnaunt. impossible. } voyde.

Hitherunto haue I spoken of condicions in deede, now will I shew what be condicions in + law, that be annexed to any estates. 2.

Estates vpon conditions lawe.

Know ye therefore, that if the office of a Parker, Steward, Constable, Wedle, or Bayliffe, or such like office be graūted to a man for term of his life, though there be no condicion at all mencioned in the graunt, yet the law speaketh of a condition in this case, which is, that if the party to whom such office is gieuen, shall not execute al poynts appertaining vnto his office accordingly by himself or by his lawful deputy, it shalbee lawfull for the graunter to enter and discharge hym of his office & this condicion is called a condiciō in law. There be also three other maner of estates vpon condition, ÿ is to say, condicions against the lawe, condicions repugnant, and condicions impossible.

First estates vppon condicions against the law be, as if a mā make a feoffemēt, gift, graūt or lease vppon condicion, that if the feoffours, donours, graūtors or lessours kil J. S. whiche is not the kings enemy, or burne his house, that then it shalbe lawful to the feoffours, donours. &c. to reenter, this condicion is voyd, & + the estate is good.

Cōdicions agaynst ÿ lawe.

And like lawe is, if such condicions be to be perfourmed of the part of the feoffee graunt. &c.

But if these be, that a lease for terme of yeares be made of land vpon conditiō ÿ if the lessee kil J. S. that then hee shall haue fee simple, although that he in this case perfourme the condicion, his estate is nothing thereby enlarged, because the condition is agaynst the lawe.

Also ye shal vnderstande that where an obliga-

Obligation. ligātions is endorsed with a cōdicion ye which is against the law: both the obligatiō and also the condition be clearely voyde in the lawe.

Cōdiciōs repugnāt. Estates vpon conditions repugnaunt be, as if a feoffement or a gift in tayle be made vpon condition that the feoffee, or donee, shal take no profit or shall do no wast, and such other lyke; such condicions be voyde, and the state good & effectuall in the lawe notwithstanding.

Also if a lease be made for terme of life vpon condition that hee shall doe fealty, that is as a voyde condition.

Likewise it is, if a man that hath nothing in the maner of Sale, graūteth a rent charge going out of the same vpon cōdition, that the person shall not bee charged; this graunt is good, and the condition is voyde.

Condicyons impossible. Estates vpon conditions impossible, be as if a feoffement be made vpon cōdition, that if the feoffee goeth not through ye sea on foote to Caleys in one day, then it shall bee lawfull to the feoffour to reēter, this is a frustrate, and voide condition, and yet the estate is good.

Like law is of a lease made for terme of yeares. &c. or an obligation with a condition impossible vt supra, the obligatiō or lease is good, and the condition voyde to all purposes.

An acte how straungers shall take aduauntage of conditions made. An. xxxii. H. viii.

IT is enacted that as well persons, whych haue or shall haue any gifte or graunte of the king by his letters patents of any Landes, personages, titles, or other hereditamentes, or auy reuersion of ye same which dyd belong

belong to any monastery or other ecclesiastical house dissolued or otherwyse come into ye kinges handes since the fourth Day of February in the, xxvij yere of our soueraigne Lord kyng Henry the eight, or which at any tyme heretofore dyd belong to any other person, and after come into the kynges handes, as also all other personnes beynge grauntes or assignes to the king or to any other person, their heyres executours, successours, & assignes, shal haue like auauntage against the fermours, & their executours, administratours & assignes, by entre for none payment of the rent, or for doyng wast or other forfaiture, & also shal haue the same auauntage by action only of not performing of other conditions couenantes or agreements contayned in the indentures of their leases or grauts against the said fermours, & grauts, their executours, administratours, & assignes, the sayd lessours or grauntours thē selues might haue had at any tyme. And againe mutually and on the other side, the said fermours and graunts for terme of yeares, lyfe or lyues, their executours, administratours and assignes, shal haue like aduauntage against them for any conditiō couenaunt or agreement contayned in the said indēture, as they might haue had against their said lessours and grauntours their heires successours; al benefits & aduauntage of recoueries in value, by reason of any warrāty of dede, or in law by voucher or otherwise only except.

Prouided that this acte shal not extende to charge any persone for brech of any couenaunt or condition comprised in any sutch wrytynge, but for such as shal be broken and not performed

ned after the firſt day of September in the. 33 yeare of this king and not before.

Liuery of ſeaſin and attornment.

Al feoffements, giftes in taile, leaſes, for terme of life or for terme of anothers life, of lands or tenementes, ther can be no alteration tranſmutation of poſſeſſion by the auciente lawes of this realme, vnleſſe ther be a certayn ceremonye adhibited and ſolempniſed in the preſence and ſyghte of neighbors or others: which ceremony is called liuery of ſeyſon.

The maner of liuery of ſeaſō

And ye ſhal vnderſtand, that this ceremonye of liuery of ſeaſon is done, when the feffour, honour, leaſſour, or their deputy com with ye neighbours ſolemply to the lands or tenements, & they put the feoffee donee or leſſee in poſſeſſion of the ſayd landes or tenements by deliuering vnto him a clod of yearth, or the ringe of the doze, or ſome other thing in the name of ſeaſon; and for this ſelfe cauſe this ceremonye of law is called liuery of ſeaſon, that is to ſay a tradition or geuing of ſeaſon.

Diuerſity betwene poſſeſſion, & ſeiſon.

But this ceremony is not required in leaſes for term of yeres, or in leſſes at will; for alſmuch as the leſſour in ſuch leaſe remayneth ſtil ſeaſed, and the leſſee only hath poſſeſſion without any liuery of ſeaſō; and therfore the termes of the law be that ſuch a man is poſſeſſed; whereas in feoffementes, gyftes in tayle, and leaſſes for life he is called ſeaſed.

Wher

Wherfore if a feoffement or lease for life bee made of lands or tenementes, & before that the liuery of seasin be made, the feoffour dyeth, the heyre of the feoffour shall haue the lands. Per summum ius, that is to say, by the rigour of the law; notwithstanding ỹ the feoffes hathe payd to the feoffour the price of the land, and although the feoffee be in possession. But otherwise it is of a lease for the terme of yeares.

Atturnement.

A like ceremony is vsed when rent charge, rent seruice, rent in grosse, auouson in grosse, a villaine in grosse, commō in grosse, common for beastes, certain estoures, & sutch other things as passe by way of graūt, be graunted; for it is no ful and perfit graunt til it be consignat and sealed as it were with ỹ ceremony of atturnement. This atturnement is nothing els, but when the tenaūt of land, of which a rent graūted is graunted, or out of which a rent is graūted, do make some euident significatiō & token that he accepteth the person of whom the graūt is made to be in the same respect vnto him that the gtauntour was. As for an example, if the tenaunt of the land after he haue heard of the graunt, commeth to the graūt, that is to wit to the person in whom the graūt was made, and say in this wyse, or in like effect,

I agree me vnto the graūt made vnto you by sutch a man, or I am wel apaid and contented of the graunt ỹ such a mā hath made vnto you. But the most vsual frequent forme of atturnement is to say. Syr I atturne vnto you by force of the said graūt, or I become your tenant; or to deliuer vnto the graūtee, a penny or a half penny by way of atturnement.

How atturnemēt shalbe made.

If

If a man maketh first one graunt to one perſone, and after another to another perſon, that graunt ſhall ſtand to which the tenaunt will atturne, although it be the latter graunt

And yee ſhal note, that if a mann be ſeaſed of a manour, which is parcel in demeane, and parcel in ſeruice, and doth aliene the ſame Manoure to another, onleſſe the tenaunt of ỹ manour do atturne, the ſeruices ſhall not paſſe; only tenauntes at wil excepted, for it nedeth not to cauſe them to atturne.

Diuerſity

Note furthermore, there is a great difference betweene geuing a penny in name of ſeaſin, & geuinge by waye of atturnement; for when it is geuen to the tenant to that graunte in the name of ſeaſon, it doth not only imploy an atturnement, but alſo it geueth him ſuch a ſeaſin that if the rent afterward were behinde and not payed, he may now vpon the ſeaſin of the penny, after a lawful diſtres taken, and after reſcous made, bring an aſſiſe of nouel diſſeaſine; whereas if it were geuen only by waye of atturnement he cold not bring the Aſſiſe, but his writ of reſcous only.

Aſſiſe.

Writ of reſcous.

Alſo ye ſhal vnderſtand, that where landes be deuiſeable by teſtament, by the cuſtome of any auncient borough or citty, if the reuerſion of any landes be by teſtament bequethed to a man in fee, and the teſtatour which we cal the diuiſoure dyeth, the deuiſee that is to wit, hee to whom the deuiſe was made, hath forthe with the reuerſion in him without further remonye of atturnement. Likewyſe it is if a man by teſtament doth bequeth a rent charge that he is ſeaſed of, or a rent ſeruice, there nedeth

Atturnement.

deth none atturnement at all.

If two ioyntenaunts be of land & the Lord graunteth the seruice to another, if one of the ioyntenaunts atturneth it is enough. Atturnem

Finally if a lease bee made for terme of lyfe, the remainder to another in taile, ỹ remainder ouer to the right heyre of the tenaunt for terme of lyfe; if in this case the tenaunte for terme of life, will graunt his remainder in fee to another by his deede, this remainder passeth forth with, without anye atturnement; for if any atturnement were requisite it should be made of ye tenaunt for terme of life, which in this case is the grauntour himselfe. And in vayne it is that ỹ grauntour should be enforced to atturne, sith an atturnement is adhibited & had to none other purpose, then to haue the consent and agrement of the particuler tenaunt, to the intẽt ỹ it may appeare, ỹ he hath notice & knowledg of this graut; but here where the particuler tenaunt himselfe is the grauntour, an atturnement were superfluous, and more then neded. Note requisite.

Note furthermore that where there is lord and tenaunt, and the tenaunt leaseth his tenements to a woman for life, the remainder ouer in fee, the woman taketh a husband, & after the Lorde graunteth the seruices &c. to ỹ husband in this case during the couerture, ỹ seruices be put in suspence. But if the wife dye liuing the husband, the husband and his heires shal haue the rent of them in the remainder. &c. And in this case there nedeth no atturnement by word, because the husband ỹ ought to atturne, acceptеth the graunt of the seruices, ỹ which acceptance, is an atturnement in the law. Suspēce

Hitherto

Hytherunto haue I briefly touched and ouerrunne the sondry kinds & formes of estates. Now forasmuch as ther is no tenure but hath vnto it some seruice knit and annexed, it were very necessary to declare how many kyndes of seruices there be, and what seruice is due to euery tenure. For the knowledge hereof ye shal vnderstande ỳ the principal and most common kinde of seruice that the tenaunte ought to his Lord, is called knights seruice.

Knights seruice.

Knights seruice includeth homage, fealty, and for the most part escuage, and whosoeuer holdeth his lāds by knights seruice, is bound by the law of this realme to do vnto his lord homage and fealty, & to pay for the most part escuage, when it shalbee assessed by authority of parliament, as hereafter more plainly shalbe declared.

Homage.

How the tenaunte shall doe homage.

Homage is the moste humble and reuerent seruice that a man of free estate & conditiō can do, for when the tenaunt shal do homage to his Lord, the lorde shall sitte and the tenaunt then knele downe before him vpon both knees, holding his hands betwene his lords hands, & say in this wyse. I become your man frō this day forward, of life and of member, and earthlye honoure and to you shalbe faithfull and true, and faith to you shal beare for ỳ landes that I clayme to holde of you, sauing ỳ fayth that I beare vnto our soueraigne Lord the king, and then the Lord so sitting shall kisse hym. But if an ecclesiasticall persone, which by his order

and

and profession hath addicted himself to the seruice of God in especiall, shall do homage to his Lord, he shal say. I do to you homage and shal be to you faythfull and true, and fayth to you shall beare for the tenementes that I holde of you, sauing the fayth which I owe to our soueraigne Lorde the Kynge.

What a religious person shal saye when he doth homage.

Also when a woman not maryed, doth homage to hir Lorde, she shall not say, I become your womā, for it is not conuenient that a woman should be the woman of any other then of hir husband that shee shall mary, but shall say euen as the ecclesiastical person saith. I do vnto you homage. &c.

What a woman shall saie.

And if perchannce a man holdeth sundrye landes, and tenementes of sundry Lordes, and euery of them by knyghtes seruice, then in the ende of his homage making, hee shall say, sauing the fayth that I owe to our soueraigne Lord the king, and to mine other Lordes.

And none is bounde to do homage to ỹ lord, vnlesse it be such tenaūt, as hath in the tenancy an estate of fee simple, or fee taile, either in his owne right, or in the right of an other.

What tenaūt shall doe homage.

For if a woman haue landes or tenementes in fee simple, or fee taile, which shee holdeth of hir lord by knights seruice; and taketh an husbande and hath issue, in this case the husbande in the life of his Wyfe, shall doe the Homage: because he hath a title to haue the lands by the curtesye of Englande, if hee ouerlyueth hir, and also hee holdeth them nowe in his wyues right; yet before issue had betweene them, the homage shal be made in both their names. But if the woman dyeth before any homage made,

Fralty

in hir life, and the husband keepeth stil the landes as tenaunt by curtesie, now he shall not do homage to his lorde because hee hath nowe an estate but for terme of life.

Fealty. Fealty, is as mutch to saye, as fidelity, or faythfulnes in doing; whereof the tenant shal holde his hand vppon a booke, and say thus.

Howe a tenaunte shall doe fealty. Here you this my Lord, I to you shal be faithfull and true, & fayth to you shall beare for the lands, and tenements, which I clayme to hold of you, and duely shall do to you the custome & seruices which I owe to do to you at the termes assigned; so me help God and his saints.

Dyuersity betwen homage & fealty. And then he shall kisse the booke; but hee shall not kneele as he that doth homage, nor do such humble or reuerent seruice as is before declared in homage.

And yee shal obserue that homage cannot be done but to the lord himselfe; whereas the steward of the lordes courte or the Bayliffe may take fealte for the lord. Also tenaunt for terme of life shall do fealty; but homage, as I sayd he cannot do.

Escuage. Now as concerning escuage, that is to say, the seruice of the shielde, yee shall vnderstand, that he ỹ holdeth his landes by escuage, when the kynge maketh a voyage royall into Scotlande for the subduing of the Scots, is bound to be with the Kinges maiestie by the space of. xx. dayes wel and conueniently arayed and appointed for the warre, And he that holdeth his lande but by the moyty of the fee of knightes seruice, is bounde by the force of his tenure to be with the Kinge by ỹ space of. xx. dayes, and so pro-

Escuage Scutage

so proportionably according to the rate & quantity of his tenure.

But now to our ~~institute and~~ purpose; after this voyage royal into Scotland in which the king goeth in persone, and after the retyre into England agayne, a parliament is wonte to be sommoned in which shal be prescribed, & assessed what euery parson that held his landes by homage, and went not with the kinge neyther by himselfe nor by his deputye, shal' paye to his lord in satisfaction of his not seruinge, and according to the taxion herof euery tenant shal pay to his immediate lord, whether it bee ye king or other, after the rate & portion of his tenure, if he holdeth by an hole fee, he shall pay the whole escuage, if by moity, the like ha-, if by the fourth part of a fee, the fourth part &c. And this money thus assessed is called scutage or escuage, for which the Lorde to whom it is due may very wel for the non payment thereof distrayne. But here it is to be noted, that some tenaūts by custome vsed time out of mynd are bound to pay but the moity, or the thirde parte of that, which shal bee assessed and limitted by act of parliament.

Parliament.

Distres for escuage

Yea and the custome is in some place, that to what summe of mony soeuer escuage is assessed, the tenauntes shal paye neuer but suche a certayne summe of money, and this kinde of escuage is called escuage certaine, that is to say where escuage is assessed by the parliament, to a more or lesse summe, the teuannt to pay to the lord v.s. and no more nor no lesse &c. such a tenure is called Socage tenure, & not knights

Escuage certayne.

seruice, whereas the other is called escuage vncertayne.

Escuage vncertain

Finally ye shal vnderstād, that escuage vncertayne is alwayes adiudged to be knightes seruice, and draweth vnto it, ward. Mariage, and relieue; but escuage certayn is no knights seruice, but is of the tenure of socage as shall be hereafter more aptly shewed,

Of ward, mariage, and relieue.

EVery knightes seruice draweth vnto it ward, mariage, and relieue. Wherfore it is now right expedient somwhat to entreat of them.

Warde.

Ye shal therfore be admonished, that when the tenaunt which holdeth his lands by knightes seruice dyeth, his heire male being at that time within the age of. xxi yeares, the lord shal haue the warde: that is to say, the custodye or keping of ỹ lands so holden of him to his own vse and profit, til the heyre commeth to the ful age of xxi. years. For the law here presumeth that til he come to his age, he is not able to do such seruice, as is of this tenure required.

Furthermore if such heires be vnmaried at that time of the death of the tenaunte, then the Lord shal haue also the ward, and the bestowing of the mariage with him.

Mariage.

The ful age of a woman

xiiii. yeares.

But if a tenaunt by knightes seruice dyeth his heire female being of the age of xiiij yeres or aboue, then the Lord shal haue the ward nether of the lande ne yet of the bodye of suche an heire, and the reason hereof is, because a woman of that age, may haue a husband able to do

to do knightes seruice, that is to say, to waite vpon the kinges maiesties person, when hee auaunceth into Scotland with his army roiall.

But if such an heyre female bee within age of. xiiij. yeres, and not maried at the time of ỹ death of hir auncestour, then the lord shal haue the warde of the land holden of him, till such heyre female commeth to the age of. xvj. yeres, by force of an acte of parliament in the statute of Westminst. the first Cap. xij.

Note, that there is a great diuersity in the law, betwene the ages of females & of males, for the female hath these many ages appointed by the lawe. First at vij. yeres of age the lord hir father may distrayne his tenaunts for ayde to mary hir. Second at ix. yeares of age, she is dowable. Thirdly at xij. yeares she is able to assent to matrimony. Fourthly at xiiij. yeares she is able to haue hir lande, and shalbe out of ward, if shee bee of this age at the death of hir auncestour.

Diuersity of age.

Age of a woman.

Fiftly at. xvi. yeres shee shalbe out of ward, though at the death of hir auncestour, she was within age of. xiiij. yeares.

Sixtly, at. xxi. yeres she is able to make alienations of hir landes or tenement. Whereas ỹ man hath but two ages, the one at xxiij. yeres to haue his landes holden in socage, and to assente to matrimony; the other at xxj. to make alienations.

The age of a man.

Yee shall vnderstande that by the statute of Merton, the sixte Chapter, it is enacted, that if in case the Lorde do mary their ward to villaynes or others, wherein dispargemente, if such heires so maried be within the age of. xiiij

yeares or of such age that the sayd ward cānot consent to the mariage, then if the frēds of this heire complayne and feele themselues grieued with this vnmeete mariage, the next of kinne to the heire, vnto whom the Heritage cannot dissend, may enter into the landes, and put out the lorde, which is gardeine in chiualry. and if the next kinsmā wil not thus do, another kinsman of the infant may do it. And shall take the issue and profites to the behouse and vse of the heire, and shall yeelde accomptes thereof vnto him when he commeth to his full age.

Accompt geuing.

Also there be diuers other dispergementes, which be not expressed in the said statute, as if the heire being within age of consent, and in ward, be maryed to a decrept persone, or crepill, as to one that hath but one foote, or one hande, or that is deformme creature, or hauinge any horrible disease or continuall infirmity. All these and such like be dispergements.

Diuers dispergements.

But here also ye shal vnderstand, that it shal be said no dispargement, vnlesse the heyre be so maried when he is within age of discretiō, that is to saye, within the age of xiiij yeares. For if he be that age or aboue, and assenteth to such mariage, it is no dispargement, neither shall ỹ lord for such mariage lose his ward, because it shalbe reputed and assigned to the folly of the heyre being of age of discretion, to consente to such mariage.

Now if the lorde, then beinge gardeyne, offer to the heyre beinge in his warde, a conuenient mariage without dispergement, and the heyre refuseth it, as he may at his choyse and election very well do, then the lord shal haue ỹ

valu

value of the mariage of such heyre, whē he cō- meth to his full age. But yet if he marry hym selfe beinge so in warde againste the will of his gardeine, then he shal pay the double value by force of the statute of Mertō before remembred

Value of mariage.

Double value of mariage.

And yee shall note, that if landes holden by knights seruice discended to an infāte or chylde within age frō his mother or from anye of hys aunce stours, his father being yet alyue, in this case the lorde shall not haue the mariage of hys heyre, for during the life of his father, ỳ sonne shalbe ward to no man.

One shall not be warde lyuinge his father.

Finally, it is to be knowen that he which is garden in chiualry in right, may after he hath ceased the ward, graūt the same eyther by dede or without deede to another man, and than hee to whom such a graunt is made, is called gar- deine in faite.

Now as touching relieke ye shall know that if a man holdeth his land by knightes seruyce, and dyeth, his heyre being of full age (ỳ ful age of the male is xxi. yeares; of the Female xiiij.) then the lorde, of whom the land is holden, shall haue of the heyre relieke.

Rastall. Laudabria.

Note yet that al Eries, barons, or other the kinges tenauntes holdinge of him in chiefe, by knights seruice die, at the time of his Deathe his heyre be of full age, that is to say xxi. yeres, he oughte to pay the old relieke for his enhery- tance, that is the heire or heires of an Erle, for an whole Earldome one hundreth pound. The heir or heirs of a Baron for one whole barōny one hundreth marks. The heire or heires of a knyghte one hundreth shillings; & he that hath lesse, shall geeue lesse accordinge to the olde cu-

stome

stome of fees; like lawe is obserued of al other that holdeth of any other their Lords immediatly vt supra.

Also a man may hold lands of a lord by two knights fees, and then the heires being of full age at the death of his auncestours, shal pay to his lord for relieke. x poundes.

Seruice of castell garde.

YE shall vnderstande that a manne may holde by knightes seruice, and yet not hold by escuage, nor shall pay any escuage; for he may holde by castell garde, ỹ is to say, by seruice to kepe a tower of his lordes castel, or some other place vpon a reasonable warning, when his lorde heareth that enemyes wyl come or be already come into England.

This seruice is also knights seruice, & draweth to it ward, mariage and relieke, as in all cases the common knights doth.

Grounde in ỹ law.

Of graund seargeanty.

THere is also another kynde of knightes seruices, which is called graunde sergeantye, that is, where a man holdeth his landes or tenementes of the kynge by such seruice as he oweth in proper persone to doe, as to beare the Banner of loure Soueraigne Lorde the kynge: or his speare, or to conducte his hoaste, or to bee his Marshall, or to be the sewar, caruer, or butlar, at the feaste of the Coronation, or to be one of the Chamberlaynes of the receipte of his Elchequere, or to do like seruice to the kynge in proper persone ſuth

Such maner of seruice, I say is called graunde sergeanty, that is to say, a great or high seruice: and the cause why it is so called, is because it is the most honourable and most worthy seruice that is, for he that holdeth by escuage, is not appointed by his tenure, to doe any other more speciall seruice then an other is bound ẏ holdeth by escuage; but he ẏ holdeth by graūd sergeauntie, is bounde to do some speciall seruice to the kyng.

The most high seruice,

Also if he that holdeth of the king by graūd sergeantye dyeth, his heire being of full age, than the heyre shal pay to the kyng for relefe not only .c.s. as he that holdeth by escuage shal do, but moreouer the clere yerely valneof those landes and tenementes whech he so holdeth of the king by graund sergeanty.

Relief of the tenāt be graū sergeātie

Furthermore ye shal obserue, ẏ in the marches of Scotlande some men hold of the kyng by cornage, ẏ is to say, by blowing of a horne, to thintente to warne the men of the countrye when they heare ẏ the Scottes or other theyr ennemyes bee comming, or be already entred into England, which seruice is also a kinde of graund sergeantie.

Cornage

Tenure by cornage.

Graunt sergeanty therfore is as much to say in Latin, as magnum seruicium, that is to say a great or high seruice; like as petty sergeanty, is called paruum seruicium that is to say, a litle or small seruice.

Diffintiō of sergeanty.

But to reuert againe to the matter, ye shall note ẏ if any tenaunt holdeth of any other lord than of the kyng by such seruice of cornage, thā it is no graūd sergeāty; but yet neuertheles it is knights seruice, & draweth to it ward, ma-

riage

riage and reliefe; for this is a rule infallible ẏ none can holde by graund seargeanty, but of the kynges owne maiesty.

ule in
e lowe.

Finally ye shal vnderstād ẏ that al they which holde of the king by this seruice called graund seargeantye do holde of the Kinge by knights seruice; and by vertue of this tenure the kynge shall haue of them warde, mariage and relyefe: but escuage yet he shal not haue of them, vnles they hold by escuage of him by expresse special wordes.

Petyte sergeantp.

Deeite
ergeānty
s socage
n effecte.

TEnaunt by petite sergeanty, is hee that holdeth his land immediatly of our soueraynе lord the king by this manner of seruice, to pay to the kinge yerely either a Bow, a Speare, a dagger, a paire of Gauntleites, a paire of spurres of Gold, a Shaft, or such other smal thinges apperteining to ẏ war & this seruice is in effecte but socage because ẏ such a tenant is not bound by his tenure to gone do any thing in his owne propre person; touching ẏ war but only to rēder & pay yerely certain things to the king as a ma ought to pay a rent. Wherfore this seruice of pety sergeātie is no knights seruice; but yet ye shal note ẏ a mā cānot hold neither by pety sergeāty neither by graūd sergeanty but of the king onely.

Homage auncestrell.

TEnaunt by homage auncestrel is he which holdeth his lande of his Lorde by homage, and both he & his auncestours whose heire

he is, haue holden the same lande of the sayde lorde, and of his auncestours time out of mynd by homage, and haue done vnto them homage, and this is called homage auncestrel, by reason of the longe continuance: which hath bene by title of prescription, as well concerning the tenaunce in the bloud of the tenaunte, as concerning the lordshippe in the lorde. And this seruice of homage auncestrel, draweth vnto it warranty (that is to say) if the lord which is now in life, hath once receyued the homage of hys tenaunt, he ought to warrant the same tenaunt what tyme soeuer he shalbe impleaded or sued, for such landes so holden of hym by homage auncestrell.

Warranty because of homage auncestrell.

Moreouer such seruice of homage auncestrel draweth vnto it acquital, ỹ is to say the lorde ought to acquite the tenaunt agaynste other lordes that can demaund any maner of seruyce of the tenauncy. Acquyt.

Wherefor if in this case the tenaunt whych holdeth by homage auncestrell, be impleaded of his landes; and vouched, or calleth his lorde to warrantye, who commeth in by processe, and demaundeth of the tenaunte what hee hath to vynde him to the warranty, and the Tenaunte sheweth how hee and his auncestours, whose heyre he is, haue holden his landes of him & of his auncestours time out of minde, surely the lorde if he cannot deny this, and if hee hath receyued the homage of such a tenaunt, is bound by the lawe to warrant him his land, so that if the tenaunt lose his lands in default of ỹ lorde thus vouched, that is to say, called to warrãty, hee shall recouer againste him as much in

value

balue of those landes and tenements which ye Lord had in the time of calling to warranty at any time after. But if the lord neuer receiued the homage of his tenaunt, then he may, verye well when he is thus vouched, disclaime in the lordship or seignory, and so put out the tenant of his warranty. Where ye shal note that in euery case where the lord disclayme in his seignory in court of record, his seignory or lordeship is extinct, and the tenaunt shall hold from thenceforth of the next lorde to him that thus declaymed.

Thus ye perceiue that homage aūcestrel is not but whereas is a long cōtinuance, as wel in the bloud of the tenaunt in respect of his tenancy, as in the bloud of the lorde in respect of his seignory. Wherefore if the tenāt doth once aliene his landes to another, although he purchase the same againe, yet he shall not hold any lōger by homage auncestrel because of this discontinuaunce, but shal hold it now by the vulgare and accustomed homage. A clause in Pardons.

Exceptid al titles & Actions of quare impedit; & al Homages, Reliefs, Harriots; Rent seruices, Rent charges, Rent sects, and the auuerages of the same, not don, or paid to ye Queen.

Of liueries.

Tenaunt in chief of the Kyng. Primer seasin.

When one dyeth which held of ye Kyng, by knightes seruice in capite, that is to say in chiefe, his Heires being within age, ye king (as before is declared) shal haue the ward and custody, aswel of the lands as of the body, ye is to wit the mariage, if he be vnmaried. But if the heyre be of full age at the time of the death of such auncestour, yet shall ye kinge by his prerogatiue royall haue prymer season of al the landes, tenementes, and other here-

hereditamentes, wherof such his tenant was seased in his demeane as of fee. And if such an heyre wil enter into his landes, when he commeth to his ful age, before he sue his liuerye, & receiue seisin by the king, no frehold shall accrew nor grow vnto him, but he shalbe demed an intruder in the kinges possession; yea and if he die so seased in the meane tyme, his wyfe shal haue no dowry of such lands; wherfore it behoueth in any wyse that such heire aswell male as female, comming to ful age before he or shee enter into their land to sue liuery. The maner and forme wherof according to the acte of Parliament lately promulgated & set forth I intende briefly to recite.

Intruder of the kinges possession.

How heires ought to sue their liueries, enacted .xxxiii. Hen. viii. Cap. xxi

NO person or persons hauinge landes or tenements aboue the yearly value of v. li shall haue any liuery before inquisitiō or office foūd before the eschetour or other cōmissioner, by vertue of the kinges writ of diem clausit extremum, or cōmission directed out of ye chauncery or othere our courtes, hauing auctority to make such a writ or cōmissions, which shal pas out of the same but by warrant or bil assigned, & subscribed by the mayster of wardes or liueries, the surueiour, at turneye or recoueroure of the said courte, or three, two, or one of them, to be directed and deliuered to the chauncelor of england or to any other chaūcelor. or officer hauinge

Writ de diem clausit extremum.

hauing power to award suche writtes, and for the writyng and sealing of the same shalbe payed of the accustomed fees. But if the lands exceede, not the sayd yearly value of v.li. then they shal pay for the seales of euery such writt or commission: viij. pence and for the writinge vi.d. and not aboue.

And the inquisitions and offices hereuppon found, shalbe retourned by the sayd escheto^rs or commissioner into the same Courte from whence the writ or commission was awarded: which done, the clarke of the petye bagge shall receyue the same offices, and make transcripte therof to the sayd mayster of the wardes, and liueries. And then the sayd mayster and ỹ surueyour, atturney and generall receyuoure, or three of them, wherof the maister or surueiour to be one, shal couenaunt and indent with such personnes for their liuerye of the castels, manours, lordships, landes, tenementes, and hereditamentes, compriſed or not compriſed in such offices, and shal make and set the rate and price of the same, and appoynt the dayes of payment thereof by obligation to bee taken for the same to the king.

And euery bil, for any speciall or generall liuery assigned, by the hands of the sayde mayster, surueiour, atturney, receyuour or three of them wherof ỹ maister or surueiour, to be one shal be warrant sufficient to the lord Chauncelor, or other officer, hauig power to passe liueries vnder any of the kinges seales accordingly. In whiche case the clarkes of the petye bagge or other clarkes, by whom the liueryes be written, shal receiue as wel for thẽselues as

for other such fees as hath beene accustomed.

Item euery person may sue at his pleasure, a general liuery for any manours, lands, tenements, rents, reuersions, remaynders, or other hereditaments, whereof the clere yerely value shall not exceede. xx. li. Prouided ỹ an office be thereof found, and a warranty firste obtayned of the sayd maister & others as is aforesayd. Geneaal liuerry.

And where such generall liuery is sued, if ỹ landes exceede the yearely value of. v. li. they shall pay for the Seale. xx. s. iiij. d. and al other fees accustomed as afterward shalbe declared. But if they exceede not the yearely value of. v. li. they shal pay but these fees folowing, that is to say, for the seale of the liuery. xij. d. To ỹ clarkes of the petie bagge for the writing, and the inrolling. xx. d. For the respect of the homage, in the Hanapar, eyght pence. To ỹ lord great Chamberlayne twenty pence. To the maister of the Rolles. xx. d. And the clarke of the liueries for the warrant and inrollinge of the liuery. xx. d.

Item no person or persons shal pay in the chequer or any other courtes for the respect of homage for any landes or hereditamentes not exceding the yerely value of. v. l. aboue. viij. d. And for the entring thereof and warrant of atturney aboue. iiij. d. Respector homage

And the value of such landes and hereditamentes not exceeding the yearely value, of. xx. pounde, shalbe taken as it is limitted in the offices, founden thereof, except by the examinations & certificat of the sayd maister surueiour atturney, & receyuour, or three of thē as it shal

otherwyse appeare and be declared in anye of the kynges courtes.

Paine for forfayture tenure.

Also no eschetour shall sit onelye by vertue of his office, for enquirie of the tenure title or value of anye landes or other hereditamentes holden of the king, beyng of the yerely valuo of v.li. or aboue without the kings writ to him directed vpon payn to forfayte v.li. for euerye time he shal so do. Neither shal he take fyr the finding of any office of lands not exceding the yerely value of v.li. aboue xv.s that is to say vi.s viii.d for his owne fee, and iij.s iiij.d for the writing of the office.

Fees of an office.

And for the charges of the iury .iij'.s And for the officers that shal receiue the offices in any court of recorde ii.s. vppon payne that the eschear for doing otherwise, shal for euery time forfayte v.li. And vpon like payne the officers of euery court of record, where such inquisitions shalbe returned, being offered vnto them within one moneth next after the finding ther of shall receyue them. The one moyty of all which forfaytures to the king and the other to the party that wil sue for the same,

And they which hereafter shalbe in case to sue liuery, whose landes and tenementes exceede not the yerely value of. v.li. may lawfully sue forth the generall liuerye by warrante from the said courts as is aforesaid, although none other inquisition be therof had nor certified, payinge neuertheiesse ỹ fees aboue remẽbred.

Finally, euery person shall sue forth his paten for his liuery, within three moneths next after the assignement of his bil, or elle his bill assigned

assigned to be voyde and of none effect,

☞ Hereafter ensueth the fees accustomed of the generall liueries.

First to the clarkes of the petybagge, for the respect of homage and fealtie the wrytyng and inrolling.xiij.s.ij.pence. To the Lorde greate Chamberlayne xl.s. To the maister of the rolles iij.pound, To the clarks of the liueries for wrytyng of the Indentures and Obligations, xx.s. be side counsel.

The fees of the speciall liuerye accustomed, to be payde to these follo wing, that is to say, for the Signet iij.li,xs. For the priuye seale xxx.s. for the great seale.xlij.s.viij.d. To the clarkes of the petie bagge.xl.s. To the maister of the liueries clarkes.xl.s. for the inrolement of ỹ knowledge of thendenture.xij.s. To the Lord great Chãberlaine of England.xl.s. for the writ of ỹ alowance for ỹ same liuery .x.s vi.pence. And note ye that sometime in especial cases the fees be more, and sometime lesse, as ỹ case and matter doth requyre.

Hytherto haue we briefly touched al kindres of knightes seruice, and thinges incident to the same. Nowe will wee with like briefnes declare the other kyndres of seruices which cõmonly be comprised vnder the generall name of socage. For euery land or tenements, either it is holde by knights seruice, or els it is of socage tenure, or at the least way of the nature of socage tenure which in effect is all one.

Wherefore first we shal define what socage is in the proper signification, which done wee shall peruse the other kindres of seruice which be the nature of Socage tenure.

What socage tenaure is.

SOcage is properly where the tenaunte is bounde to come wyth his poke, that is with his plowe to eare & sow a parcell of the demeane lands of the Lord; wherby seruice in auncient time was very common; but nowe by the mutuall consente both of the Lorde and of the tenaunt, it is conuerted for the moste parte into a yearelye rente. Howbeit, the name of socage abideth stil. Wherfore now, al that is not knights seruice, is called by the name of socage.

So that if a man holdeth by fealty onely, or by fealty & homage for all manner of seruice, it is but socage tenure; for homage alone maketh not knights seruice; yet if a man holdeth by escuage certaine as I haue sayde heretofore, hee holdeth in effect but by socage.

Gardaine in socage.

Nowe where as a man holdeth his landes by socage and dyeth, his heire being with the age of .xiiij. yeres: the Lord shall not haue the ward but the next of kynne to the heire, to whom the heritage can not discende, shall haue the tytle and wardshippe as well of the lande as of the heyre, til the heyre come to the age of .xiiij. yeres, and such tutor or gardeyne is called gardayne in socage, and shall render accomptes to the heyre, of the issue and profites that hee hath receyued of the landes during such time, deductyng his reasonable costes and expences; so that he shall not haue the wardshippe to his owne vse and profite, as the Lorde which the gardain in chiualry hath. And in case the gardayne in socage dyeth before he hath made his accompte, the heire is without remedy: because no writte

of ac-

of accompt lyeth agaynst the executors, but for the ding only.

Finally ye shall vnderstand, that when tenaunt in socage dyeth, the Lord of whom the land is hold, ~~shal~~ shal haue relief, that is to say, the value of the rente, that is yerelye due vnto him of the tenauncy besyde the yerely rent, so ẏ in effect after the death of his tenant he shall haue of the heire twoo rentes saue that for the reliefe he may distrayne forthwith, but for the accustomed rent he cannot distrayne til the vsual day of payment be come. Rent. Relief. Distresse

Franke almoigne.

TEnaunt in franke almoigne, that is to say, in free almes, is where a Bishoppe Deane, or any other ecclesiastical persō holdeth of his Lorde in pure and perpetual almes; and such tenure began first in old tyme after this manner. When a man is seased in auncient tyme of certayn lands or tenementes in his demayne, as of fee & of the sam tenements infeossed an Abbot and his couent or a Prior and his couent, or anye other persone ecclesiastical, as a Deane of a Colledge, Mayster of an Hospital, or such like to haue & to hold the same landes to them and to theire successours for euer in pure and perpetual almes, or in franke almes, in these twoo cases the tenements should be holden in frank almoygne. The first foundatiō of Frank almoigne

By force of which tenure they that hold in Franke almoygne after this sort be bounde of

right before God to make orisons and prayer
to celebrate masses & to do other diuine serui-
ces for ỹ soules of theyr graūcires & feoffes, &
Tenaunt in franke almoygne shal doe no fealty. for the soules of theyr heyres which be dead, &
for the prosperous estate of their heyres that
bee now aliue. And because of right they bee
bounde to this deuine seruice they be discharg-
ged by the law to do any other prophane or cor-
porall seruice, as fealty or such other like.

But neuertheless if such as holde their te-
nements in franke almoigne do omit and leaue
vndone these deuine seruices whereunto they
be bound before God, the lord cannot distreine
them ne yet compt them by any other meanes
by the course of the common lawe, but the on-
ly remedy is to complayne of them to their or-
dinary, who of right ought to compell such ec-
clesiasticall persons to do ỹ deuine seruice due
as aforesayde.

Tenaunt by deuine seruice. But here yee shall note that if a parson of a
church or any other Ecclesiasticall person hol-
deth of his Lord by certayne deuine seruice to
be done, as to singe masse euery friday in the
weeke: Or placebo and dyrige, or to finde a
priest to singe masse, or to destribute in almes
Dystresse for deuine seruice. C. pence to an hundred men at such a day: in al
these cases if such deuine seruice be vndon, the
lord may very wel destrayn because the seruice
is put here in certayne.

Now I sayd that if in old tyme a man did
enfeoffe such ecclesiastical person after such sort,
he should hold his landes in franke almoyne.

But at this day it is otherwyse, for by the
reason of an estatute called. Quia emptores
terrarum. West min. 3. cap. 1. No man can alien
ne

ne graunte landes or tenementes in fee simple, to holde of himselfe; so that now if a mā being seased of lands in fee simple, graunteth ỹ same by lycence to an ecclesiasticall persone in frank almoigne, these wordes franke almoigne bee + voyde, and the ecclesiastical persone shall holde them immediatly of the lorde of the feoffer by the same seruices that the feoffer helde; so that no man can holde in francke almoigne but by force of a graunt made before the sayde statute, only the kinges maiestie excepted, for he is oute of the compasse of the statute. +

Finally yee shall note that whereas a man holdeth in franck almoigne, his lord is bounde by the lawe to acquite him of all maner of seruice that any other lorde can haue or demaunde out of the said landes.

That if hee doth not acquyte him but suffer him to be distreyned, then he shall haue against his lord a certaine writ, called a writ of meane, + and shal recouer against him his damages and costes of his suite. Writ of meane.

☞ Of burgage.

A Tenure in burgage, is where an auncient borough is, of which the kyng is lord & they which haue tenements in the same borough holde the same of the king paying a certayne yerely rent, which tenure in effect is but socage tenure. Lykewyse it is, where as any other lord spirituall or temporall is lord of such borough. Socage tenure.

Here ye shal note that for the most part such + auncient boroughes and townes haue diuers customes and vlages which other Townes Custome

haue not. For some boroughes haue a custome that the yongest sonne shall inherite before the eldest. Which custome is called commonlye borough English.

Dower by custo.

Also in some borough by the custome, the woman shall haue for her dowrye all the lands and tenementes whereof her husband was sealed at any time during the matrimony‡ couerture.

Deuise by custome of borough.

Moreouer in some boroughes a man maye bequeath or deuise his Landes or tenementes by testament at the tyme of his death, and by force of such deuice or legacye, he to whome the bequeste is made, after the Death of the testatour, which made such testament may by force of this anncient custome enter into the Landes so to him bequeathed or deuised without anye leuerye of seasen to him made or further ceremony of law.

Howe be it, how and in what manner a man may at this daye deuise his landes by his laste will and testament by force of a certaine newe statute, shalbe hereafter declared.

Diuers other customes in England there bee contrary to the course of the cõmon law which if they be any thing prouable and maye stande with reason, are good and effectuall notwythstanding they be against the commõs law.

And note that no custome is alowable but such custome, as hath bene vsed by title or prescription or time out of minde.

Of byllenage or bonde seruice.

A Tenaunt in billenage is properlye when a villayne, that is to saye, a Bondmanne holdeth of his Lorde, whose Boundeman hee

he is, certayne landes or tenements, according to the custome of the manour, or otherwyse, at the will of his Lord, and doe to his Lorde villayne seruice, as for to beare and to cary the donge of his Lordes out of the citty, or out of his Lordes Manoure, and it to lay vppon the demeane landes of his lorde, or to do such like seruice and villaynes seruice. Howe bee it, freemen in some places hold their tenementes, and lands of their Lordes by custome, by such sorte of seruice, and their tenure is called tenure in villenage, and yet they themselues be no villaynes ne of seruile condition, but freemen. For the land holden in villenage maketh not the tenaunt a villayne, but contrarywise a villaine may make free land to be villaine land vnto his Lord. As if a villaine purchaseth lād in fee simple or fee tayle, the lord of the villain may enter into the lande so purchased by hys bondeman, and put him and his heyres out for euer, and this done, the Lorde if hee will may lease the same lande to his villayne, to hold of him in villenage.

Tenure in Villenage yet they no villaines

And here yee shall vnderstande, that seruitude or villenage, is the ordinaunce not of the law of nature, but of that law, which is called Jus gentium: by which a man is made subiect contrary to nature, vnto an other mans dominion. For hee that is a villaine or bondeman either he is so by title of prescription, that is to say. hee and his Auncestours haue beene villaynes tyme out of mynde; or else hee is a villaine by his owne confession in the court of recorde; so that al villaynes either they be borne villaynes, or else they bee made so. They bee

borne villains when their father being abond man himselfe begetteth them in lawfull wed=locke, eyther of a free woman or of a bond wo=man for so that the father be bound, the issue of him lawfully begotten must needes be bound by the lawes of England, hauing no regard to the condition of the mother; wheras in the ci=uil law of the Romaynes it is cleane contrary For there, partus sequitur ventrem that is to say, the seruitude or bondage of the mother ma keth the childe bounde, and not the bondage of the father. Howe be it the bastarde sonne of a bondman shall not be bound, and the reason is because a bastard is Nullius filius in the law that is to say no mans sonne.

Bastard.

They bee made bondmen or villaynes two wayes, eyther by their owne proper acte, as when a free person being of full age, will come into a courte of recorde, and there confesse him selfe bonde to another man.

Or else by the lawes of armes, called, Jus gentium, as when a man is taken prisoner in warres, and is compelled to serue and become the thrall and bondman of him that tooke hym, the lawe calleth such person a villayne, that is to say a slaue and thrall.

And ye shall note that villaynes be proper=ly called in Latin serui, because that whē they be taken in warre, the captaines be wonte not to kil them, but to sel them, and so to saue their liues, so that they be called serui a seruādo, that is to say of sauing. They be also called Manu cipia, a manu capiendo, because that they be ta ken by hande and power of their enemyes.

Diffiniti- of vil- ay.

Nowe as I sayde by the lawe of naturr,

wee

we are all borne free, but after that by the law of Gentility, seruitude or bondage did presse, and inuade the world, than ensued the benefite of Manumission. Manumission is quasi de manudacio, that is to say a geeuing out of the hand or power. For so long as a man is in bondage & seruitude, he is subiect to the hand and power of another, and when hee is manumissed he is made free, and deliuered from the sayd power; so that a Manumission is to say, a writing testifyng that the lord hath enfranchised hys villaine and all his offspringe, and sequel. Manumission.

Also if the Lord maketh to his bondman an obligation of a certaine sum of money or graunteth to him by his deede an annuity or yereiye penston, or leasseth to him by dede lands or tenementes for terme of yeres, any of these actes do imply an enfranchisement.

Likewise if the Lorde maketh a seoffement to his villayne, and maketh vnto him iuuerye of seasin, this also is an infraunchisemente, and secrete Manumission. Briefelye to speake, Wheresoeuer the Lord compelleth his villaine by the course of the law to do that thinge, that hee might otherwise enforce him to doo or to suffer without the auctority and compulsion of the lawe, he doth by implicatio infraunchise his villaine, as if the Lorde wil bryng agaynst his villayne an action of dette, an action of accompte, of couenaunt or of trespas, these and such like be in the eye of the law enfranchisementes and manumissions, because ỳ the Lord in all these cases may haue the effecte and purpose. What actes make manumission in lawe. Cause of infraunchisemēt. by implicatio

pose of his suite, that is to saye, the goods, cattels, and correctiō of his bondman, without ỹ compulsion of that law euen by his owne proper power and authority which he hath vpon his villaine. But if the Lord doth sue hys villayne by an appeale of felony, the villayne being lawfully endited of the same, before, thys is notacite manumission or infraunchisement, for the lord though he haue power to beat hys villayne and to spoyle him of his goods, yet he cannot by the law of this Realme put him to death. +

Yee shall also vnderstande, that if a mans + bondman purchased lands, or acquire and get vnto him any other thing, the lord may forthwith enter and sease the same into his owne handes. Wherefore if the Lord will bringe against his villayne a precept quod reddat, by which he demaundeth against his villaine any landes or tenements, this implieth an infranchysement, forasmuch as he bindeth himselfe to the prescript & authority of the law, whereas hee might vse his owne authority by entering and seasing the sayd landes.

Finally ye shall marke that some villaynes be called villaines in grosse, and other some be called villaynes regardant. In grosse be they of which the Lorde is seuerall seased, and not by reason of any lordshippe or maner; but they bee called regardante which doe belonge to a Manoure of which the Lorde is seased; and the sayd villaynes haue beene regardante, that + is to say exspectant, and attendante, tyme out of minde to the Lord of the saide Manoure in doinge vnto hym such seruices as to a Vylayne

laine appertayneth.

¶ Of auncient demeane.

There is also a certayne kynde of tenure which is called auncient demeane, & that tenauntes which holde by this seruice, be freeholders & by charter, & not by coppe or court rolle, or by the verge after the custome of the demeanour, at the will of the Lord. And these tenauntes be such as holde of those manours which were S. Edwardes the king, or which were in the handes of King William the conquetour, and these manours bee called the auncient demeines of the king, or the auncient demesnes of the crowne of England. And to such tenaunts which hold of such manoures be many and diuers liberties geuen and graunted by the lawe, as to be quite of tol & passage & such like impositions which bee demaunded of men for their goodes & cattels solde or boughte in fayres & markettes by, them also to bee quite and free of tare and tallage graunted by parliament, except that the kinghes maiesty do tare auncient demene as to him onlie appertaineth, when hee thinketh good for greate and vrgente considerations. Tenaunts also of auncient demeane ought to be quite of paiments to the expences and charges of the knights which come to the parliament, also they ought not to be impanelled nor put in iuries, and enquestes in the countreie out of their manours for seigniorie of auncient demeane for the lands which they holde of such manour, vnlesse they haue other landes at the common lawe, for which they ought to be charged. And if such tenauntes or any of them

which

which holde of the Manoure of aunciente demeane be distrained to do vnto their lord other seruices or customes then they or their auncestours haue vsed to do, then may they sue a certaine wryte called Monstrauerunt, directed to che lord, cōmaunding him that he distraine thē nor for to doe other seruices or customes then they haue bene accustomed to doe.

Write of Monstrauerunt.

And for further knowledge hereof ye shal vnderstande that in the Escheker there is a booke called domesdaye, which booke was made in ye time of the said saint Edward. And al the landes which were in the seisin, and in the hands of the sayde saint Edwarde at the time of the making of the said booke, be auncient demeane

Franke fee,

But the landes whych then were in other mens handes, though they bee wrytten in the said booke, be franke fee & no aunciēt demeane.

Finally it is to bee noted, that tenauntes of auncient demeane shall not bee impleaded for their said lands out of the manour wherof they so holde, and if they be, they may shew the matter and abate the writ. But if they ones aunswere to the write and iudgement geeuen, then the landes haue lost the nature and benefite of auncient demeane, and are become franke fee, that is to saye, pleadable at the common Lawe for euermore. And thus haue we spoken of the diuersity of tenures.

Abatement of ye wryt.

Of rentes.

FOrasmuch as vpon euery tenure there is cōmonly reserued one rent or other, therefore I thinke it good somwhat to treat of rentes. But ye must vnderstād that there be

be sondry sortes of rentes. There is one kind
1. of rente whiche is rente seruice. Another
2. which is called charge, and the third which is
named in French rent secke, that is to saye in
3. Latin redditus siccus, a dry rent. Nowe rent
seruice is so called, because it is knit to the te-
nure, and is as it wer a seruice wherby a man
holdeth his lands or tenements, or at the least
way when the rents be vnseuerable, coupled, & knit w̄ the seruice; as for example, wher the
tenaunt holdeth his land of the king or of any
other Lord by fealty and by certayn rent, or by
homage, fealty, or by certayn rente or by anye
other sortes of seruices & by anye rente, this
rent is called rent seruice. And here ye shal not
ẏ if this rent seruice, be at anye tyme when it
ought to bee payed, behynde and vnpayed, the
Lord of whom the land or tenement is so hol-
den, whether it be in fee simple, fee tayle, for
terme of lise, for yeres, or at wil, may of com-
mon righte enter and distrayne for the rente,
though ther be no mention at al, ne clause of di-
stresse put in the deede or lease, I sayd before
ẏ the nature of this rent seruice is to be cou-
pled and knit to the tenure. For where no te-
nure is, there can be no rent seruise. And ther-
fore if at this day I be seased of landes of fee
symple, and make a deede of feoffment of the
same to another in fee simple reseruige by the
same dede a rent, this can be called no rent ser-
uice because now there can bee no tenure be-
twene the feoffour and the feoffee. Otherwise
it is of feoffementes in fee simple made before
the statute of Westminster the third. cap. 1. cal-
led Quia empturus terrarū, For before ẏ ma-
kyng

Diuision of rent seruice.

Distresse of commō right.

kyng of that statute, if a man had made a feoffement in fee simple, reseruing to him a certayne rent, yet thoughe it hadde bene without deede here had bene begunne and treated a newe tenure betwene the feoffour and ỳ feffee, & the feffee should haue holden of the feoffour who by vertue of the same might of cõmon right haue distrayned for such rent. But at this day by force of the sayd act, ther can be no such holding or tenure created or begon, and consequently no rent seruice can be at this day reserued vpõ any gyft in fee symple, except it be in the kings case, who beinge chiefe Lord of all, euer might and may geue landes to be holden of him.

Thus yee see that at this day, no subiect cã reserue any rent seruice vnto him vnlesse the reuersion of the lands or tenements that he shal graunt be still in him, as where he graunteth them in fee taile, or maketh but a lease for term of life or for certayne yeres or elȝ at wil.

For in all these cases the reuersion of the fee simple remayneth still in him and therefore if here be any rent reserued is to be called a rent seruice and is of common right distreynable, thoughe ther bee no clause of distresse in the deede of feoffement or lease.

But here ye wil aske mee, when in the case before remembred a man at this daye geueth cleane awaye the lande or tenemente from him selfe in fee symple so that there is no maner of reuersion of the same remayninge in him at all & yet neuertheles reserueth vnto him by his deede a certayn rent what maner rent shal this be called: I aunswere if there bee in the deede indented any clause of distres, ỳ is, that if the

rent

rent be behinde vnpayed, it shal be lawfull for the feoffour to enter and to distraine, it is called a rent charge, forasmutch as the lands is charged therewith, but how? of common right, no, but only by vertue and force of the wryting. But on thother side if there be no sutch clause, of distresse put in the indenture, then the rente so reserued shalbe called a rente secke.

Charge.

Likewyse if a man that is seased of certaine Landes, will graunte eyther by Indenture, or by his deede polle, that is to say, single & not indented, a yearely rent out of the same landes to another, whether it bee in fee simple, fee tayle, for terme of life, for yeres, or at wil, with clause of distres, then this rent is called a rent charge and he to whom such rent is graunted, may for default of payment thereof enter and distrayne But contrary if the graunt bee made withoute any sutch clause of distres, it is called rent secke that is to saye, a drye rente, because hee cannot come to it, in case it be dented by way of distres, in so much that if he were neuer seased of it, hee is by the course of the common lawe, wythoute remedye. Otherwyse it is of a rent charge, for here, he to whom the graunt is made when the rent is behinde, may chose whether he wyll sue a write of annuitie againste the grauntour, or distreine for the rente behynde, and retayne the distres till time he be payde accordingly. But hee cannot haue both remedies together, but must take hym to the one; for if he ones recouer by a wrytte of annuity, then is the Lande dyscharged. And if hee sue not his writte of annuitie, but distraine for the arerages, and the tenaunt sueth a repleuin, whereupon the other

Annuity.

auoweth

auoweth the taking of the distresse in court of recorde: then is the lande charged, and the person of the grauntoure discharged of the action of annuitie.

Estoppe. Ye shall also vnderstande, that if a man wil that another shall haue a rent charge comming out of his land, and yet will not that his person shalbe by any meanes charged by writ of annuite, he may then haue such clausein ỹ ende of his deede, Prouiso vt presens scriptum, nec quicquam in eo contentū vllo pacto se extendat ad onerandum personam meam per breue seu actionem de annuitate, sed tantummodo valeat ad onerandum terras, fundos, et tenemēta mea de annuo re dditu predicto. If this or such lyke cause be added, then the Land is charged & the persone of the grauntour is discharged.

Prouiso.

Also if a man will make a deede of graunt in this wise, that if Iohn at Stile be not yearely paide at the feast of Christmas for terme of his life xx. shillinges sterling, that then it shalbeee lawful for the said Iohn at Stile, to distrayue for it in the Manoure of Dale, this is a good rente charge; because the Manour charged with the rente by the way of distres; & yet neuertheles in this case ỹ person of him ỹ made such dede is discharged of any action of annuite forasmuch as he graunted not by his deede any annuitie to the sayd Iohn at Stile, but onely grauted ỹ he might distrain for such yerely rēt.

Furthermore yee shall note, that if a manne hath rent charge to him and to his heires comming oute of certayne landes, and dothe purchase any parcell of this landes to him and to his heyres, in this case the whole rent charge is

quenched and gone, and the annuity also; the cause is this, that a rente charge cannot bee in such case appoyncioned. Otherwise it is of a rent seruice; as for example, if one which hath a rente seruice of .xx. ℔. by yeare, doth purchase parcell of the lande, out of which this yearely rent of .xx. ℔. is commynge, this shall not extinguish or drowne the whole rent, but for ỹ parcell onely. For rent seruice in such case may very well be appoyntioned, and rated accoyding to the value of the lande. Yet there be soyts of rentes seruices which in no wyse can bee appoyncioned. As where a Tenaunte holdeth his land of his loyd by the seruice, to render to his loyd yearely at such a feast, an hoyse lading of gould, a redde rose, a gyliuer oy such like; if in this case the loyde doth purchase parcell of the lande thus of him holden, this seruice is gone, because such seruice cannot be seuered and appoyncioned. Wi escuage is a seruice that may very well be appoyncioned accoyding to the difference and rate of the lande.

Extinguishmẽt.

Rent seruyce cannot be appoyncioned

Escuage.

But where any lands is holden by homage and fealty, if the loyd purchaseth parcell of the lande, yet he shall haue his homage, and fealty still of his tenaunt.

Yee shall marke also, that if a man maketh a lease of landes to an other for terme of life, reseruing to him certaine rente, if in this case hee graunteth that rent to Iohn at Stile, sauinge to himselfe the reuersion of the sayde land, this rent is but rent secke, because Iohn at Stile ỹ hath the rent, hath nothing in reuersion of the lande.

But he graunteth the reuersion of the lande

to Iohn at Noke for the terme of life, and the tenaunt attorneth accordingly, then hath Iohn at Noke the rent as rente seruice, bicause hee hath the reuersion for terme of his lyfe.

Rent is incident to a reuersion.

Likewise it is if a man geueth landes or tenementes in tayle, reseruing to him and to his heyres certaine rente, or maketh a lease of the lande for terme of life, reseruing certaine rente, if he graunteth the reuersion to an other and the tenaunt attorneth accordingly, the whole rent and seruice shall passe by this word reuersion; because the rente and seruice in such case be incident to the reuersion & do passe by the graūt of the reuersion. But if hee had graunted the rente onely.

¶ What remedy a man hath to recouer his rent when it is behynde.

I Shewed you before, that for a rente seruyce if it be behinde, yee may distrayne in ỹ groūd euen of common right, thoughe there bee no such clause of distresse mentioned in ỹ deede of feoffement, graunt or lease.

Also for a rent charge ye may distrain, or bring your writ of annuity at your choise and election as before is declared. But of a rente secke if yee were neuer seised of it nor of any parcell thereof, yee be without remedy by course of the common lawe, for yee cannot distrayne for it, nor yet bring your writ of annuity, but if yee were once seysed of it or of parcel therof, & it is oftsones behind, then your remedy shalbe this,

yee

yee muſt goe either by your ſelfe or by your deputy to the land or tenemente out of which the rent is comming and there demaunde the arrerages of the rent, whiche if the tenaunte denye to pay, this denyal is diſſeiſyn of the rent. Alſo if the tenaunt be not then ready to paye it, this counteruayleth a deniall, which is a diſſeiſin.

Diſſeiſin of rente ſecke.

Moreouer if neither the tenaunt nor none other man be remayning vppon the grownde to paye the rente when yee demaunde the arrerages, this alſo is a deniall in the lawe and is in very dede a diſſeiſyn. And of theis diſſeiſines ye may haue an aſſiſe of nouel diſſeiſin againſt the tenaunt, and ſhal recouer ſeyſin of the rent and the arrerages and your damages & coſtes of your writte, and of your plee. And if after ſuch recouery and execution had, the rent bee agayne to another tyme denyed you, then yee may haue rediſſeiſin and ſhal recouer your double domages &c.

Aſſiſe.

In rediſſeiſin double damages.

It ſhalbee therfore wiſdome for a man whē a rent is graunted by any perſone vnto him, to take of the tenaunt of the land a pennye or an halfepeny in name of ſeyſine of the rente; and then if at the next day of payment ỹ rent be denied him he may haue an aſſiſe of nouell deſeiſin. And ye ſhal note that there be three cauſes of diſſeiſin of rent ſeruiſe, that is to witt, reſcouſe, repleuin, and encloſer. Reſcouſe is when the lorde vpon the lande holden of him diſtraineth for his rente behynde, and the diſtreſſe bee reſceiued from him; or if the lord come vpon ỹ lande and will diſtrayne, and the tenaunt or any other man for him will not ſuffer him, this is called Reſcous.

Three cauſes of diſſeiſin of rent ſeruice.

Reſcouſe.

Repleuin is, when the lord hath distrayned, and repleuin is made of the distresse by writ, or by playnt, Encloser is where landes or tenementes bee so enclosed that the Lorde, cannot com in the lands or tenements for to distrain. And the chiefe cause why such things so made be disseisin to the lord, is forasmuch as the lord is by this way disturbed of the meane, and remedye whereby he ought to come and haue his rent that is to wete by distresse.

And there be foure causes of disseisin of a rent charge, that is to wete rescous, repleuin encloser and denier. For denyer or denyal is aswell a disseisin of a rent charge, as it is of rent seck.

Finally ye shall vndeestand, that there be two causes of disseisin of rent secke, ẏ is denyal, and incloser.

And it seemeth ẏ there is yet another cause of disseisin of all the thre rentes aforesayde, ẏ is to weete, this, when the lorde commeth to ẏ land holden of him, or when he that hath a rent charge or a rent secke commeth to the lande to distrayne for the rent behinde, and the tenaunte hearyng this encontreth him, and forstalleth him the way with force and armes, and manaceth him in such sort, as he dare not com to the grounde for to distrayne for his rente behinde for feare of death or mutilatiō of his members This is a disseisin because the party is disturbed of his meane, and lawfull remedye whereby he ought to come to his rent.

Finallye ye shal obserue and marke, that by an act of parliament made in the xxxii. yeare of our soueraigne lord kinge Henry the eight, it is lawfull for the executors and administratours

tours of tenaunts in fee ſimple, tenaunts in fee taple, tenauntes for terme of life, of rent ſeruices, rent charge, rent ſeckes, and of fee termes, for arrerages of ſuch rentes as were due vnto their teſtatours in their lyues, eyther to diſtraine for the ſame, or at their electiō to bring an action of det; except in ſuch lordſhip in Wales or in the marches thereof, whereas the tenaunts haue vſed time out of minde to pay vn to euery lord at his firſt entry into the lordſhip any ſum of money for the redemption of al maner of outcries and penalties incurred at anye tyme before the lordes entry.

Diſtreſſe or actions of det.

Alſo by force of the ſaide acte the husbande which was ſeiſed in ꝯ right of his wyfe, may after the death of his wyfe eyther diſtrayne or bring an action of det for the arrerages of ſuch rents as were due and vnpayde in hir life.

Likewiſe it is of him that hath a rente for terme of an other mans lyfe; if hee for terme of whoſe life he hath the rent dieth, yet by vertue of the ſaid act he or his executors and adminiſtrators may, either diſtraine or bring an actiō of det for the arrerages due before the death of him, for terme of whoſe life he had the rent.

How auowryes ought to be made of rents and ſeruice, enacted An. xxi. Hen. viii.

WHere any lands be holden of any perſon by rentes, cuſtomes, or ſeruices, if the lord diſtraine vpon the ſame landes for any ſutch rentes, cuſtomes, or ſeruices, and repleuin thereof to be ſhewed, the lord

Auowry, roniſaunce, or iuſtification.

Repleuin is, when the lord hath distrayned, and repleuin is made of the distresse by writ, or by playnt, Encloser is where landes or tenementes bee so enclosed that the Lorde, cannot com in the lands or tenements for to distrain. And the chiefe cause why such things so made be disseisin to the lord, is forasmuch as the lord is by this way disturbed of the meane, and remedye whereby he ought to come and haue his rent that is to wete by distresse.

And there be foure causes of disseisin of a rent charge, that is to wete rescous, repleuin enclo ser and denier. For denyer or denyal is aswell a disseisin of a rent charge, as it is of rent seck. Finally ye shall vndeerstand, that there be two causes of disseisin of rent secke, ỳ is denyal and incloser.

And it seemeth ỳ there is yet another cause of disseisin of all the thre rentes aforesayde, ỳ is to weete, this, when the lorde commeth to ỳ land holden of him, or when he that hath a rent charge or a rent secke commeth to the lande to distrayne for the rent behinde, and the tenaunte hearyng this encontreth him, and forstalleth him the way with force and armes, and manaceth him in such sort, as he dare not com to the grounde for to distrayne for his rente behinde for feare of death or mutilatiō of his members This is a disseisin because the party is disturbed of his meane, and lawful remedye whereby he ought to come to his rent.

Finally ye shal obserue and marke, that by an act of parliament made in the xxxii. yeare of our soueraigne lord kinge Henry the eight, it is lawfull for the executors and administratours

Encloser.

Foure causes of disseisyn of rent charge.

And ii. of rent secke

tours of tenaunts in fee ſimple, tenaunts in fee tayle, tenauntes for terme of life, of rent ſeruices, rent charge, rent ſeckes, and of fee fermes, for arrerages of ſuch rentes as were due vnto their teſtatours in their lyues, eyther to diſtraine for the ſame, or at their electiō to bring an action of det; except in ſuch lordſhip in Wales or in the marches therof, whereas the tenaunts haue vſed time out of minde to pay vn to euery lord at his firſt entry into the lordſhip any ſum of money for the redemption of al maner of outcries and penalties incurred at anye tyme before the lordes entry.

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Alſo by force of the ſaide acte the husbande which was ſeiſed in ye right of his wyfe, may after the death of his wyfe eyther diſtrayne or bring an action of det for the arrerages of ſuch rents as were due and vnpayde in hir life.

Likewiſe it is of him that hath a rente for terme of an other mans lyfe; if hee for terme of whoſe life he hath the rent dieth, yet by vertue of the ſaid act he or his executors and adminiſtrators may, either diſtraine or bring an actiō of det for the arrerages due before the death of him, for terme of whoſe life he had the rent.

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Auowry, conuſaunce, or iuſtification.

may auowe, or his Bayliffe or ſeruaunte, may make conſaunce or iuſtifie the taking vpon the ſame landes, as within his fee and ſeignory, alledging in the ſayd auowry, conſaunce, or iuſtification, the ſame landes to be holden of him, without naming any perſon certaine to be tenaunt of the ſame, and without making any auowry iuſtification or conſaunce vppon any perſon certaine. And likewiſe vppon euery writ ſued of the ſecond deliuerance. And they, that make any ſuch auowry, iuſtification, or conſaunce, if the ſame auowry, conſaunce, or iuſtification, be found for them or the plaintife be none ſute or otherwiſe barred, then they ſhall recouer their whole damages and coſtes.

Alſo the ſayd plaintifes & defendaunts ſhal haue like plees, and one prayes ayde (plees of diſclaimer onely excepte) as they might haue had before the making of this acte.

Plees in auowry.

Alſo ſuch perſons as by the cõmon law may ioyne to the plaintife, or defendaunt in the ſaid writs of Replegiate or ſeconde deliuerance, as well without proceſſe as by proceſſe, ſhal from henceforth alſo in this caſe ioyne vnto them as wel without proceſſe as by proces. & haue like plees & like aduauntages in al things (diſcleimer onely excepte) as they might haue by the common law before this atte.

An acte for the aſſuraunce of fermours made. An. xxxiii. Hen. viii.

All leaſes hereafter to be made of any lãdes or other hereditaments by writing indented vnder ſeale for terme of yeres or for term of life by any perſõs being the

the age of xxi. yeres, hauing any state of inheri-
taunce either in fee simple, or in fee taile in their
owne right or in the right of their churches, or
wyues, or ioyntly with their wyues, shall bee
good and effectuall against the lessours, theyr
wyues, heyres & successours, accordinge to the
estate comprysed in such indenture of lease.
Prouided that this acte shall neyther extende
to any leases to be made, of any lands, or here-
dytamentes, being in the handes of any fermours
by vertue of any old lease, vnlesse the same olde
lease be exprest, surrendred, or ended within
one yeare after the making of the newe lease,
nor yet to any graunt to be made of the reuer-
sion of any landes or hereditamentes, nor to a-
nye lease of such landes or hereditamentes, as
haue not commonly bene letten to farme by the
space of xx. yeares next before such lease thereof
made, nor to any lease to be made without im-
peachment of wast, nor to any lease to bee made
aboue the nomber of xxi. yeres or three liues, at
the most from the day of making thereof. And
that vpon such lease be reserued yerely during
the same, due and payeable to the lessours theyr
heyres & successours, to whom the lande should
haue come after the death of the lessoures, and
to whom the reuersion thereof shal pertayne ac-
cordinge to their estates & interestes, so mutch
yerely rent or more, as hath bene accustomably
yelding for the same, within xx. yeares next be-
fore such leases, and that he to whom the reuer-
sion therof shal pertaine after the death of such
lessours or other heyres shall haue such lyke
remedy and aduauntage against the fermours
thereof theyr executours and assignes, as the

Surren-
der of the
old lease

The wife albe artye to e leafe.

leſſour himſelfe ſhould haue had.

Prouided alſo that the wife bee made partye to euery ſuch leaſe as ſhalbe made by her huſband of any landes being the inheritance of the wife, and that euery ſuch leaſe bee made by Indenture in the name of the huſband & his wife, and ſhe to ſeale thereunto. And that the rente be reſerued to the huſbande & wyfe, and to the heires of the wife, according to her eſtate of inheritaunce therin. And that the huſbande ſhal in no wiſe aliene diſcharge graunt, geue away the ſame rent reſerued nor any part therof longer then during the couerture, without it bee by fine leuied by the ſaide huſband and wife.

Prouided furthermore that this act extende not to geue liberty or power to any perſonnes to take any moe fermes, leaſes, or taking of any landes or other hereditaments, then they mighte haue done before the making of this acte, nor yet extende to geue any libertie to any perſone or vicar of any Church or vicarage, for to make any leaſe or graunt of any of their meſſuages, landes, tenementes, tythes, profites or hereditamentes belonging to their churches or vicarages otherwiſe then they might haue done before the making hereof. Anno xxxij. Henrici viij.

What graūt by corpora tion is good.

It is furthermore enacted that the graunte leaſe or gift or election of the gouernour or ruler of any hoſpitall, colledge, deanerye or other corporation with the aſſent of the more parte of ſutch of the ſame as haue voyce thereunto, ſhall be good and effectuall any rule or ſtatute made by any foundour to the contrarye, notwithſtanding.

Of

auoyding

Of falſifying of recoueries by fermours, enacted. Anno.xxi.H.viij.

Recouery

ALl fermours or leſſes for terme of yeres may falſyfye for their terme only recoueries had by fayned titles, as well as tenaunt in freehold. And the ſame fermours their executours and aſſignes ſhall enioye their ſayd termes according to their leaſes againſt ſutch recoueries euen as if none ſutch had be ſuffered. In which caſe neuertheles the recouerer, after ſutch recouery had, ſhall haue like remedy againſt the fermours, by auowrye, or action of dette for rentes and ſeruices reſerued vpon the ſame leeſſes beinge due afore the ſame recoueries and like actions for waſt done after the ſame recoueries, as the leſſours might haue had, if no ſutch recouery had be had. Furthermore no ſtatute ſtaple, ſtatute marchaunte, or execution by Elegit, ſhalbe auoyded by any ſutch fayned recouery, but like remedye ſhall be had to auoyde and falſifye the ſayde recouerye, as is ordeyned for ỹ fermour or leſſee for terme of yeares.

Auowrye or action of det.

Of tythes and howe they ſhalbe recouered, enacted. An.xxxiij. Henrici.viij.

ALl perſones ſhall truly pay their tithes and offeringes, according to the lawfull cuſtomes and vſages of pariſhes and places where ſuch tithes of duties bee due. And if they doe wylfully withholde anye parcell of them: the partye whether hee bee eccleſiaſti

cleſiaſtical, or laye that ſhould haue them, maye conuent ſuch perſones before the ordinary, hys cōmiſſary or other competent miniſter or iudge of the place where ſuch wrong ſhalbe done according to the eccleſiaſticall lawes. And in euery ſuch cauſe or ſuite, the ſame ordinarye or iudge hauing the parties or their procuratoure before hym, ſhall proceade to the determination therof ordinarily or ſummarily, according to ye courſe of the ſayd lawes, and thereuppon ſhall geue ſentence according.

And in caſe any of the parties of any matter concerning that ſuite doe appeale from the ſentence & diffinitiue iudgemēt of the ſaid Iudge, then the ſame Iudge forthwith vppon appellation made, ſhall aiudge to the other partye the reaſonable coſtes of his ſuite, & ſhall compell the ſame party appellaunt to pay the ſame, by cōpulſary proceſſe & cenſure of ye ſaide lawes; taking ſuerty of the other partye to whome ſuch coſtes ſhalbe adiudged, to reſtore the ſame to the appellaunt, if afterwarde the principall cauſe of that ſuite of appeale ſhalbe adiudged a gainſt him. And ſo euery iudge eccleſiaſticall ſhal iudge coſtes to the other party vpon euery appeale to be made in any ſuite or cauſe of ſubtraction or detention of any tythes or offeryng, or in any other ſutte to be made cōcerninge duties of ſuch tithes or offeringes.

And if any perſons after ſuch ſentence geuen againſt them, ſhall obſtinately refuſe to paye their tithes or duties or ſuch ſummes of money ſo adiudged wherein they be condempned, then two Iuſtices of the peace of the ſame ſhyre, whereof one to be of the Quorum, ſhall vppon certi=

certificat or complaint to them made in writing by the Iudge that gaue the sentence, cause the to be attached and cõmitted to the next Iayle, there to remayne without bayle or mayneprise, till they shall haue founde sufficient suerties to bee bounde by recognisaunce or otherwyse before the same iustices to the kinges vse for ỹ performaunce of the said iudgement.

Prouided, that no person shall be sued or otherwise compelled to pay any tithes for any landes tenementes, or hereditamentes, which by ỹ lawes of this realm are discharged, or not chargeable to the payment of any such tithes.

Also this act shal in no wise binde the inhabitauntes of London, & Suburbes of the same to pay their tithes and offeringes with ỹ same Cittye and Suburbes, otherwyse then they should haue done before.

Furthermore yf any hauing an inheritaunce, freehold, term, or interest in any personage, vicarage, portion, pension, tithes, oblations or other ecclesiastical profite made or to be made tẽporall or admitted to be in temporall hands by the lawes or statutes of this realme, be disseised or otherwise put frõ the same, or any other person claming to haue interest therein; ỹ person so disseised or wrongfully put frõ his sayd right or possession, his Heyre, wyfe, & other, to whom such wrong shalbe done, may haue remedy in the kynges temporall courtes, as the case shal require for ỹ recouery therof by writes originall of Pre. quod, reddat, ass. of nouell disseison, Mordanc. Quod et deforciat, writs of dower or other writs original to be graunted in the chauncery of euery such personage, vica-

bycarage poztion, penſion, oz other profitte ecclesiasticall according to the nature of the ſuite thereof. And writs of couenaũt & other writs foz fines to be leuied and all other aſſurances to be made of any ſuch perſonage oz profits, ecclesiastical, ſhalbe deuiſed & granted there, like as hath bene vſed foz fines to be leuied & aſſuraunce to bee had of landes oz other hereditaments, & al iudgemẽts giuen vpon ſuch writs oziginal graunted foz any the pzomiſes, and al fines leuied & acknowledged in any of ỹ kings ſaid courts thereof, ſhalbe of like foꝛce as iudgement giuen and fines leuied of landes tenements, and hereditaments.

Of moztuaries enacted
An. xxj. H. viij.

NO perſon ſpirituall their ſeruants, oz bailiffes ſhall cal any perſon befoze any iudge ſpirituall foz the recouery of any Moztuaries moze thẽ hereafter is mentioned vpon paine to forfayte foz euery time ſo much in value as they ſhall take aboue ỹ ſum here limitted and ouer ỹ .xl.s. to the party greued, foz which he ſhall haue an action of det by writ, bil, oz infoꝛmation, wherein no wager of law, eſſoyne, noz pzotection, ſhalbe alowed. Firſt no moztuary ſhall be taken of any which at his death hath in mouable goods vnder the value of .x. markes. Alſo no moztuaries ſhalbe taken but onely where moztuaries haue beene vſed to be paide, and thereafter the foꝛme hereafter mencioned. Noz in no mo places but one, that is, to weete, there where his moſt abiding is, and there but one. Noz no perſon ſhal take

foz

for the mortuarye of anye person beinge at his death at the value of x. marks aboue his dettes paid, and vnder xxx.li. aboue iii.s.iiii.d And of the value of xxx.li. & vnder xl. not aboue vi.s viii.d. And of the value of.ix.or aboue of anye summe what soeuer it be. not aboue.x.s.

Also no mortuary shal be asked or payed for any woman couert baron, or child, or any person not keping house, or for any wayfaringe man, but the Mortuaties of such wayfarig men, be answerable in that place where they had their most dwelling at the tyme of their death.

Neuertheles such spirituall person may take any thing which shalbe deposed or bequethed to him or to the high aulter of the Churche.

Also nothing shal be taken for Mortuary in Wales, nor in ye marches of ye same, nor in Calis or Barwicke, or the marches of the same, but onlye in suche places of the same, where Mortuaries haue bene accustomed to be payde and there but onely of the fourme aboue spectified. Prouided that the bishops of Banger, Landafe, S. Dauids, and . S. Asse, and the Archedeacō of Chester, may take such mortuaries of the Priestes within their dioceses & iurisdictions as here tofore haue ben accustomed. Prouided also that in such places wher mortuaries haue ben accustomed to be taken of lesse value, none shalbe compelled to pay any other Mortuary or more for anye Mortuarye, then hath bene accustomed, nor no Mortuary ther shal be demaunded of anye person exempte by this act vppon payne afore limitted.

¶ Of discontinuance.

It

IT is called a discontinuance by ỹ lawes of englād, when hee that hath the possession of landes or tenementes for the time present & yet not hauīg the fee simple in him self nor in his owne right, only maketh an alienatiō of the same to another by reason wherof he that should haue them after him and which then hath right vnto them, can not enter, but is driuen to his remedy by waye of action in such wyse that the sayd lands be not vtterly shifted and gone from suche person or persons as haue right vnto them but be allonly discontinued for a time; til the person which after the death of such discontinuer hath righte vnto them do continue and bryng them home agayne not by entree, but by sute and waye of action. As for example a tenaunte in tayle of certayne landes doth enfeoffe another in the same in fee symple, or fee tayle, hath issue and dieth, his issue cannot enter into ỹ lands though he hath title and right vnto them, but is put to his action, whiche is called a formedon in the descender. And if such tenaunt entayle which maketh such a feoffement, hath no issue at time of his death, it is yet neuertheles a discontinuance to him which is either in the reuersion or in the remaynder, so that neither the one nor the other can enter but be driuen to theire actiō, hee in the reuersion to his formedon in the reuerter, and he in the remainder to his formedō in the remaynder.

Formedō in the discender.

Formedō in the reuerter or remaynder.

In like maner if a byshop doth aliene landes which be parcel of his bishoprieke and dyeth, this

this is a discontinuance to his succeſſour for=asmuch as he cannot enter, but is driuen to his writ of enter ſine aſſenſu capituli.

Entre ſine aſſenſu capituli.

Semblably, if a Deane be ſole ſeaſed of landes as in the right of his Deanery and maketh ſuch an alienation, this is a diſcontinuance to his ſucceſſour. Alſo if the maiſter of an hoſpital alieneth any lands of ꝑ hoſpitall, this is a diſcontinuance and his ſucceſſour cannot entre, but is put to his writ. De ingreſſu ſine aſſenſu confratrum et ſororum.

Ingreſſu ſine aſſenſu confratrum et ſororum.

But if a parſon or a vicar of a Church, will alien any of his glebe landes to an other in fee ſimple or fee tayle, and dieth, or reſigneth hys benefice, this is no diſcontinuance to his ſucceſſour, but he may very well enter notwithſtanding ſuch alienation made by his predeceſſour. And the higheſt writ that a parſonne can haue, if his predeceſſor hath alened his glebe lād or loſt it by defaut or redicions is a Juris vtrū.

Juris vtrū.

And furthermor note, that no tenaunt if the land can by his or their act diſcontinue ꝑ right of him in the reuerſion, onles it be by feffemēt with liuery and ſeaſō, or elſe by a releſſe wyth warraunnte.

And note that ſutch thinges as paſſeth by way of graunt by deede without liuery & ſeaſon cannot bee diſcōtinued, as a uo wſon cōmō or villaine in groſſe, reuerſion, rent, charge, cōmon for beaſtes certeine and ſuch other like.

Alſo ye ſhall vnderſtande, that in the. xxxij. yeare of this kings moſt noble raigne, it is enacted that no fine, feoffement or other act to be made or ſuffred by ꝑ huſbād only, of any lands or tenements being the inheritance of freholde of hys

his wyfe during the couerture betwene them, ſhall be any diſcontinuance thereof or be preiudicial or hurtfull to the ſayd wife or to hir heires, or to ſuch as ſhal haue right, title, or intereſt to the ſame by the death of ſuch wyfe, but that the ſame Wife and hir Heires, and ſutch other, to whom ſuch right ſhal appertain after hir deceaſſe, maye then lawfully enter into all ſutch landes and tenements according to their rightes and titles therein.

¶ Howe recoueries by collusion agaynſt Tenaunts for terme of life, is no diſcontinuance, enacted. An. xxxii. H. viii.

Where diuerſe perſons ſeaſed of landes, and hereditamentes, as Tenauntes by the curteſye of Engiand, or otherwiſe only for terme of life, or liues, haue heretofore ſuffered other perſons by agreement or couine betweene them had, to recouer the ſame agaynſt them in the kinges courte, by reaſon whereof, they to whom the reuerſion or remainder thereof hath belonged haue after the deaths of ſuch tenants bene driuen to their actions for the recontinuance and obtaining of the ſaid lands and tenementes ſo recouered, and ſometime haue beene clerely diſherited of the ſame, it is enacted that all ſuch recoueries hereafter to be had by agrement of the party or by couine, or agaynſt any ſuch particuler tenaunte of landes, or hereditamentes, wherof he is, or hereafter ſhalbe ſeaſed, as tenaunt by the curteſſe of England, tenaunt in taile after poſſibility of iſſue extinct,

or otherwyse for terme of life, shal from hence-forth as against such persons to whom the reuersion or remainder shall then appertaine and against their heyres & successours bee clearelye voyde. Prouided that this act extend not to any person ỹ shal by good title recouer any hereditaments without fraud or couin against any such perticuler tenaũt by reason of any former right or title, nor yet to auoyde any recouerye to be had against any such particuler tenaunte by the assent and agrement of those in the reuersion or remainder, so that such assente & agreement do appeare of record in the kings court. proviso.

How wrongful disseisin is no discent in the law, enacted. Anno xxxij. Henrici. viij. Cay. xxxiij.

Where diuers persons haue by strength and without title entered into landes & tenementes, and wrongfully disseised & dispossessed the rightfull owners and possessours thereof, and so being seased by dysseisin haue thereof dyed seased by reason of which dying seased, the parties ỹ were so disseised & dispossessed, or such other persons as before such discent might haue lawfully entred into the said landes and tenementes, be thereby clearely excluded of their entre into the lawe & put their action for their remedy and recouery therein, it is enacted, that the dying seased hereafter of any such disseysour hauing no right or title therein, shal not bee deemed anye such discente in the lawe to take away the entree of such persones or the heyres, which at the time of the same discent had good title of entree into

into the same. Except that such disseisour hath had the peasible possession of his lands or tenements wherof he shal so die seised by the space of fiue yeres next after the disseisin by him committed without entre or continuall clayme by such as haue lawfull title therunto.

¶ The limitation of prescription, enacted. An. xii. H. viii.

NO person shal sue or maintaine any writ of right, or make any title or claime to any landes, tenementes, rentes, annuities, comons, pencions, porcions, corrodies or other hereditamentes of the possessiō of his auncestours or predecessours, & declare any further seisin or possession of his auncestour or predecessour, but only of the seisin or possession of his auncestour or predecessour, which hathe bene seised of the same within xl. yeres next before the feast of the same wryt, or next before ye said title or clayme to be sued.

Limitation of xl. yeares.

Also none shall sue or maynteine any assyse of Mordauncestour, conisage, ayle, wryt of entre vpō disseisin done to any of his auncestours or predecessours, or any other action possessary vpon the possessiō of any of his auncestours or predecessours, for landes or hereditamentes of further seisin or possessiō of them, but onlye his seisin or possession vpon which was seysed thereof within fifty yeares next before the feast of the original of the same wryt. And none shal maintaine action for landes or other hereditaments vpō his owne seisin or possession therein, aboue xxx. yeres next before the feast of the originall of the same wryt.

Limitation of l. yeres.

Limitation of xxx. yeares.

Item

Item none ſhall make any auoẅzy or conyſaunce ſoz a rent, ſute, oz ſeruice and alledge any ſeaſin of the ſame in his auoẅzye oz conyſance in poſſeſſion of his aunceſters ooz pzede- Auoẅzy
ceſſours, oz in his oẅne poſſeſſion, oz in the poſ-
ſeſſiō of any other, ẅhoſe eſtate he ſhall clayme
to haue aboue fifty yeares next before the ma-
king of the ſaid auoẅzy oz conyſaunce.
Moreouer al foꝛmedons in reuerter, to foꝛme-
dons in remainder, & Scire facias vppon fines
of landes oz other hereditamentes, oz be ſued,
ſhalbe taken within fifty yeares next after the
title of action fallen. And if any do ſue any of ẏ
ſaid actons oz ẅzittes foꝛ landes oz other he-
reditamentes, oz make any auoẅzye, conſance,
pzeſcription oz claim foꝛ any rent, ſuite, ſeruice,
oz other hereditaments, and if he pzoue that he
oz his aunceſtours oz pzedeceſſours ẅere in ac-
tuall poſſeſſion oz ſeaſon therein, at anye tyme
ẅithin the yeres beforе limitted, if the ſame be
trauerſed oz denyed by the party playntife, de-
maundaūt, oz anoẅant, oz by the party tenaunt
oz defendaunt, hee & his heyzes ſhal from hence-
foꝛth be vtterly barred foꝛ euer, of euery ẏ ſaid Barre.
ẅzits, actions, auoẅzies, conſaūce, pzeſcryp-
tion, title & claime hereafter to be ſued oz made
foꝛ the ſame landes, oz other the pzemiſſes, foꝛ
ẅhich ſuch action, ẅzyt' auoẅzy. conſaunce,
title oz claime hereafter ſhalbe ſued oz made.
Pzouided, that all perſonnes ẅhych noẅe Proviſo.
haue any of the ſaid actions, ẅzits', auoẅzyes
Scirefacias, conſaunce, pzeſcription, tytle, oz
claime depending, oz that hereafter ſhall ſue oz
bzing anye of the ſayde ẅzyttes, oz actions oz
make any of the ſayd auoẅzyes, conſaunces,

prescription titles, or clayme at anye time before the feast of the Assention of our lord which shalbe in the yeare of our lord, a thousand fiue hundreth forty and fixe, shal alledge this season of their aunce stours, or predecessours, or their owne possession and season, & also haue al other lyke aduauntage in the same writes, actions, auowries, consaunces, prescriptions & clayms as they migh haue hadd before the makinge of this statute. Whether state shall take effect

2. Prouided also that if any person be now within the age of xxi. yeares or couerte baron, or in Prison, or out of this realme now hauing cause to bring any of the sayd writtes or actions, or to make any auowryes, conysaūces, prescriptions, or claims, it shalbe lawful to such persone to sue to bringe anye of the sayd actions, or to make any of the sayd auowries, consaunces, tytles or claims at any time within fixe peres next after such persone now beinge within age, shal accomplishe the age of xxi yeares, or now beyng couert baron, shalbe sole, or now beinge in prison, shalbee at theire liberty, or now beyng out of this realme, shall come and be within this realme. And ỹ euery such persons in their sayde actions, auowries, consaunces, titles or claymes to be made, sued or cōmenced within the sayd fixe yeares, shall alledge the season of their aunce stors or prede cessours, or of their owne possession, or of the possession of those whose estate they shall then clayme. And also within the same fixe yeares, shal haue like aduauntage in the same, as they might haue had before the making of this acte.

3. Prouided also, that if the sayd persons now being within age, or couert baron, in prison or out

out of this, realme doe dye within age, or being couert or in prison, or out of this realme or decease within .vi. yeares next after they shall accomplish their ful age, or shalbe at large within this realme, or shal becom sole & no determination or iudgement had of such title, actions, or rightes so to them accrewed, then the nexte heire of such persons shall enioy, like aduauntage to sue demaunde, auowe, declare, or make their said titles claymes or prescriptions wyth in sixe yeares next after the death of such persounes, as the sayd infaunte after his full age, or the said woman couert after the death of her husbande, or the same persounne beynge oute of this realme after his repayre or commynge into the same, or the sayde persounne imprysoned after his enlargement and comming oute of prison, might haue had within six yeres then next ensuinge by force of the prouision laste before rehersed.

4. Prouided also, that if any persounes before the sayde feaste of the Ascention, sue any of the sayde actions, or make anye auowrye, title, or claime, and the same happen by the death of anye the parties thereunto, to bee abated before iudgement or determination therof had, then ỹ said persons being demaundauntes, or auowaunce, or making any such conisaūce, prescription, title, or clayme, beinge then on lyue, and it not then their next heyres, maye commence their action, and make their auowrye, conysaunce or clayme vpon the same matter, within one yeate nexte after such suite abated and shal haue like aduauntage to sue demaunde auow, declare, or make their saide title claimes

Attaynt vppo false verdict.

or prescription within the sayd one yeare as ye demaundantes in such writ or suite abated or as such as did auowe or make conisaunce, title, clayme or prescription myght haue enioyed in the former action or suite.

Attaint vppon false verdit.

Prouided furthermore that if any false verdit hereafter be geuen in any of the sayd actiõs suites auowries, prescriptions, titles, or claimes then the party greued maye haue his attaint vppon euery such verdit, & the playntife in the same attaynt vppon iudgement for him geuen shall haue like reouery execution and other aduauntage as hereafter hath bene vsed.

Of fynes.

FInes haue their name, because they make a fynal ende determination of all suites, stryfes and debates betwene men. For the due leuying wherof it was enacted in the iiij. yeare of King Henrye the vij. that they must be solempiye before the Justices of the common place, redde and proclaymed the same Terme, and three Termes next following the ingrosemente, at whiche tyme all the plees must cease. And such fynes shalbe a sufficient barre and discharge agaynst all persons sauing women that be couert baron, if suche women be not priuy to the same fyne, or suche as be within age, in Prison, out of the realme, or oute of theire righte myndes. But these fynes shal not conclude ne barre al straungers which haue right to enter or to haue action, if they com within fiue yere after such proclamations

tions made or (in case the cause of actiō falleth vnto them after the fine so duely leuied) if they comen commence their action and suite within v. yeres next after such cause of actiō to thē accrued. And they may sue against the takers of the profites. But if they that haue right thereto, be within age, in prison, couert barō, or out of the realme, or not in their right memory, thē their title or entree shalbe saued vnto them till they be of ful age, out of prison, discouered and sole within the realme, or of right minde, & thē within fiue yeares after, their action or entre, must be sued or made with effect.

Also by the sayd statute it shalbe a good plee for al straūgers to say, that they that were parties to the fine nor none other to their vse, had any thinge in the tenementes or landes at the time of the leuying of the fine.

Furthermore in the .xxxij. yeres of this king, for thauoyding of certaine doubtes and ambiguities, it was enacted, that all fines as well heretofore leuied, as hereafter to be leuied, according to the sayde statute of Henry the vij. by any person of the full age of .xxj. yeares of any landes or other hereditamentes, being before the fyne leuyed, in any wyse tayled vnto him or any of his auncestours in possession, reuersion, remaynder or in vse, shalbe immediatly after the same fine leuied, ingrossed, & proclamations made a sufficient barre & discharge for euer as wel against him, & his heyres clayming the same onely by force of any such intayle, as against all other to theyr vse, so that the same fines be not leuyed to any woman after the death of hir Husbande, contrary to the

ſtatute made the xj. yere of Henry the ſeuenth, of landes and tenements of the inheritaunce of purchaſe of hir huſband or of any of his auncestors giuen to hir in dower, for terme of life, or in tatle, in vſe, or in poſſeſſion. Excepted alſo al fines leuied or to be leuyed of any ſutch landes or hereditaments of the owners therof by any ſpeciall acte of parliament made ſith the ſayde fourth yere of Henry the viij. be reſtrained frō making any alienations, diſcontinuaunces or other alienations of the ſame. Alſo of ſuch landes as be now in ſuite & variaunce in any of ỹ kinges courtes or whereof any euidences bee now in demaund in the chaūcery, or which be all ready recouered. Excepted alſo fines leuied or to be leuyed by any perſon of landes or tenements graunted to him or to his auncestours in tayle, either by the kinges letters patents or by vertue of any act of parliament, whereof ỹ reuerſion is in the king. And confirmed in the xxxiij. yere of Henry the viij.

¶ Of teſtamentes or laſt willes.

Diuiſion

Written teſtamēt.

THe teſtament nuncupatiue.

TEſtamentum in latin, is asmuch to ſay as mentis teſtatio, that is a declaration or witneſſing of a mans minde. And there be two ſortes of teſtaments. The one is called teſtamentum ſcriptum, that is, a written Teſtament, or laſt Will by writinge, and the other is called teſtamentum nuncupatiuum, a teſtamēt nuncupatiue, which is whē a man doth expreſſe by mouth his laſte Will & Teſtament without writinge, by callinge bee fore him certayne of his neighbours, in whoſe pre-

presence hee doth signifie by woordes his last minde & will. And this for most part mē vsed to do when for feare of sodennes of death, they dare not abide the writinge of their will. And this writ (vnlesse it be in certaine cases) is as stronge and as sure, as is a Testament or last will put in writinge and sealed with the seale of the testatour.

Also though a testament by writing bee not sealed with the seale of the testatour, yet is the testament good and effectuall in the lawe.

And yee shal also marke, that where a man maketh once his testament and will, and afterward maketh another will by woords, if hys last will be proued before the ordinary & by him put in writing & insealed with his seale, such last will shal auoyde the first will, vnlesse it bee in special cases, & so alway the latter will and testament shall auoyde the former.

Finally by an act made the .xxj. yere of king Henry the eyght, it was ordayned that where part of the executours named in the testament wherein any landes or tenements be willed to be solde by them, refuseth to take vpon them ỹ administration & the residue doe take ỹ charge and administration vpon them, in this case all bargaynes & sales in the said lands made only by those executours, and take the administration of the testamēt vpō them, shalbe as good and effectuall, as if all the residue of the executours so refusing had ioyned in the makinge of bargayne and sale.

Executours.

¶ The difference betwene executours and administratours.

Execu-

rutor.

EExecutours is when a man maketh hys testamente and last will, and therein nameth the person which shall execute his testament, then he that is so named, is his executour: and such an executour shall haue an action against euery debtour of his testatour.

Assetes in the handes of executours.

And if the executours haue assetes, ỹ is to say sufficient in their handes, then shall euery one to whom the testatour was in debt, haue actiõ against the executour, if he haue an obligation or specialty to shew. But in euery case where the testatour myght wage his lawe, there no action lyeth against the executour.

nistratour.

Administratour is he, to whom the ordinary committeth the administration and bestowing of the goods of a dead mã, for default of an executour. And actions shall lye against him and for him as for an executour, and he shalbe charged to the value of the goods of the dead, & not further, if it be not by his false plee, or for that he hath wasted the goods of the dead. But if the administratours die, his executours be not administratours, but it behoueth the ordinary to commit an new administration. Howbeit if a stranger, I meane him that is neyther executour named in the testament and last will, nor yet administratour appointed by the ordinary will take the goods of the deade, and mynister of his owne head and minde without lawfull autority, this person shalbe charged and sued as an Executour, and not as administratour in an action which is brought against him by any creditour. But if the ordinary make a letter ad colligendum bona defuncti, he that hath such a letter is not administratour, but the action lyeth in

Executor of hys owne wrong.

eth in this case agaynst the ordinary, as wel as if he toke the the goods by his owne hand or by the hande of any other his seruaunt, by any other commandement.

An act of probate of testamentes made An. xxi. Hen. viii.

NOthinge shal bee taken by anye hauing auctorye to take probation, insinuation, or approbation of any testament wher the goods of the testatour, do not amount aboue the valu of. C. s. except to the scribe for writing therof. vi. d. And for the commission of ministration of the goods of any dying intestat, not being likewise aboue. C. s. vj. d. Also none hauing power to take probate of testamentes. shal refuse to approue testaments being lawfully offered vnto them in writing with waxe therto affixed redy to be sealed, so that they be lawfully proued before the same ordinary to be true. And when the goods of the testatoure do amounte aboue an C. s. & not exceede xl. li. none shal take for ỹ probation registring, sealing and writinge of any such testament aboue iij. s. vjd, whereof to be to them that haue auctority to take the probation ij. s vi. d. and the other xij d. to the scribe for registring.

And where the goodes amounte aboue. xl. li then onely v. s. to be taken, wherof to be to thē that haue auctority to take the probation. ij. s and vj. d. and the other ij. s. vj. d. to the scribe for

for the registring, or els if hee refuse that ij.s. vi.d. thē he to haue for euery.x.lines, euery line contayning in length x.inches, a penny.

And they that haue authoritye as is aboue said, shall approue, insinuate, seale and regester the testamentes, and deliuer them sealed wyth the seale of their office to the executours for the sum abouesaid, and that with conuenient spede without any fustratory delay.

And if any person die intestate or the executours refuse to proue the testament, then they hauing authoritie as is abouesaid, shall graunte the administration of the goods to the Wydow of the person deceased, or to the nexte of kinne or to bothe after their discretion, takyng suretye of thē for the true administration of the goodes and dettes, which they shalbe so auctorised to minister. And where one or diuers clayme the administration as next of kinne, which be egall in degree of kinred or where any one personne desireth the administration as next of kynne wher in deede diuers persons be in equality of kinred, then in any such case the ordinarie shal be at libertie to take one or mo making request. And where diuers require the administration, or where but one or mo of them, & not all being in like degree make request, then the ordinary shal admit the wydowe, and him or them onlye making request or anie of them, taking nothing for the same, wherthe personne disseassed died not worth C.s. And if he died worthe. C.s. and not aboue.xl.li. then ij.s.vi.d. onely to bee taken. And the executour or administratoure calling to him the dettours two at the leaste: or such persons to whome any legacye was made;

Surety.

and

and if they refuse, then ȳ next of kin to the person deceased; and in their default, two other honeste persons shall by theire discretions make a true inuentorye indented of all the goodes; which persons swearing before the byshop or his officers to be trew, shal deliuer the one part therof vnto them, and the other kepe himselfe. And none hauing auctorytye to take probate of testamentes, vpon payne contained in this statute, shal refuse to take any such inuentory presented or rendred to them. +

Inuentorye of goodes.

Prouided if any person shall dispose, or will by his testament any landes or hereditamentes to be sold, that the money or profytes of the same be accompted for goodes or catteles.

And they hauing the auctority abouesayd vpon the deliuerye of the seale and sygne of the testatour, shal cause the same to bee defacted & incontinent shal redeliuer to the executoure without any clayme; and if any require a copy of ȳ testament and inuentory, then they hauig auctority of their ministers, shal without delaye deliuer them a copy, taking therfore, for els for the registring of the same as before, or els for euery ten lines, i.d.

Prouided that where they hauing auctority as is aboue sayd, haue vsed to take lesse for the probate of testamentes or other thinges concerning the same, then is here specifyed; they shal take as they did before this act.

Now if any that haue auctority to take probate of testamentes or their ministers, do attempt agaynst this acte, they shal forfayt for euery time to the party greued as much money as they shal take cōtrary to this act. And ouer that

that .x.li. the one halfe to the kynge, the other to the party grieued, that wil sue by action of det, bil, informatiō or otherwise in any of ỹ kinges courts, wherein no essoine protectiō nor wager of the lawe shalbe alowed. And euery of them shalbe charged for himselfe and for none other.

Prouided, that euery one hauing auctority abouelayd, may call before them euery persone named executours, to ỹ entente to proue and refuse the testamente, and to bring inuentories, and to do euery other thing cōcerning the same as they might before this acte, so neyther they nor their ministers shal take aboue the fees ymitted by this acte.

How we landes and tenementes may be by testamente or otherwyse disposed, enacted. An. xxxij. H. viij.

EVery persone hauing landes or other hereditamentes holden in socage, or of ỹ nature of socage tenure in chief, and not hauing anye landes or hereditaments holden of the kyng by knightes seruices, or socage tenure, in chiefe, or of the nature of socage tenure, in chiefe, nor yet of any other persōne by knights seruice, may geue, dispose, and deuyse aswel by testament in wryting, as otherwyse by any acte lawfully executed in his lyfe, al his said lands or hereditaments or any of them.

And euery persōne hauing landes or other hereditamentes holden of the kinge in socage or of the nature of socage tenure in chiefe, and hauing also any other landes or hereditamentes holden of anye other persone in socage or of the

the nature of socage tenure, and not hauing any hereditamentes holden of the king or of any other by knights seruice, may from ỹ said tyme geue & deuise aswel by testamente in wryting, as otherwise by any acte lawfully executed in his life, al and euery of them at his pleasure, leauing to the king all his right of prymer season and reliefes, and also all other rightes and duties for tenure in socage or of the nature of socage tenure in chiefe, as heretofore hath beene accustomed the same to be taken & sued oute of the kinges handes by the person to whom anye such landes shalbe disposed or deuised in like maner as hath bene vsed by any heire or heyres before the making of this statute. And sauinge and reseruinge also fines for alienations of such landes and hereditaments holden of the Kyng in socage, or of the nature of Socage tenure in chiefe, whereof shalbe any alteration of freehold or inheritaunce made by wyll or otherwyse as is aforesaid.

Prymer seasen reliefes.

Item all personnes hauing landes or other hereditamentes or estate of inheritaunce holden of the kyng in chiefe by knightes seruice or of ỹ nature of knights seruice in chiefe may geeue will, or assigne two partes of the same in three partes to be deuided, or els as much thereof as shal amount to the yerely value of ij. partes of the same in three partes to bee deuyded in certaintie and by speciall deuisions, as it may be knowen in seueraltie for the aduancemēt of his wife, preferment of his children, & paimēt of his dets or otherwise at his pleasure. Sauing to ỹ king aswel the wardship & prymer season of as much as shal amount to the clere yerely value of the

the third part thereof, without diminution dower, fraude, couene charge, or iabridgemente thereof, as also all fines for alienations of all such lands holden of him by knights seruice in chiefe whereof shalbee anye alteration of freehold or of inheritaunce made by will or otherwyse. And euery person hauing lands or tenements of estate of inheritaūce holden of ỹ king in chiefe by knights seruice, and other Landes holden of him or by any other by knightes seruice or otherwyse, may geue or assigne by hys testamente or otherwyse as is aforesaide, two partes thereof in three partes to bee deuided or els as much thereof as shal extend to the yerely value of two parts, or be deuided in certaintye. Sauing to the kyng, as well the wardship and primer season of as much, as shall amount to ỹ yerely value of the third parte, without diminnution, &c. As also for all fines for alienatyon as is aboue said,

Item euery persone holding landes or tenements onely of any other then the kynge by knightes seruice and other lands and tenementes in socage, or of the nature of socage tenure may geue, dispose or assure by testamente or otherwyse two parts therof holdē by knyghtes seruice, as much as shall amount to the ful yerely value of two partes. and also all the Landes and tenementes holden by socage or of ỹ nature of socage tenure at his pleasure. Sauing to the lord of the lāds & tenements holden by knights seruice for his wardship asmuch therfore as shal amount to the cleare yearely value of the thirde part without diminution. &c.

Fynes for alienations.

And euery parson holding onely of the kyng

by knightes seruice, but not in chyefe, or holdinge of the kinge by knightes seruice and not in chiefe, and also other hereditamentes of others by knightes seruice, and holdinge also others hereditamentes of any other person in Socage or of the nature of socage tenure may giue and assure by his last wyll or otherwyse two partes of ỳ is holden of ỳ king by knightes seruice and two partes of that is holden of any other personne by knightes seruice, or as mutch of either of them as shall amount to the full yerely value of two parts, and also al his landes and tenementes so holden in socage, or of the nature of Socage tenure, sauinge as well to the king the wardship of as mutch as shall extend to ỳ cleare yerely value of ỳ thirde part of the same so holden of him by knyghts, seruice without diminution. &c. As also to the Lords of whom any of the sayde landes beene holden by knights seruice for the wardship as much of ỳ same as shal amoũt to ỳ clere yerely value of ỳ third parte in maner aboue declared.

And if that thirde parte which in any of the cases aboue sayd shal come to the kinge, do not amoũt to the cleare yerely valu of the full .iiij part of al the sayd hereditamentes, whereof ỳ king shalbe intitled to haue the custody or primer season: then the kinge may take into his hands as much of the other two partes of the sayd hereditamentes as with that of the same hereditamentes remayning in his hands shall make vp the cleare yerely value of ỳ third part thereof so to be had to him in title of wardship and primer season. And like benefit to be gieuen to euery Lord of whom any such heredita

ment shal be holdē by knightes seruice concerning onely his thirde parte for title of Wardeshippe.

Also all persons shal sue their liueries, for possessions, reuersions, or remaynders, & also pay relefes, & heriots like as they should haue done before the makinge therof. And fines for alienations shalbe payd in the chauncery vpon writs of entre in the post to be obtained there, for common recoueries to bee suffred of any lands holden of the kinge in chiefe, in like maner as is vsed vppon alienations of landes so holden in chiefe by fine or feoffement.

Prouided that in such cases where fines for alienation shalbe payd in ỹ chaūcery for writs of entre in the post as is aforesayde, none other fine shalbe payd there for any such writs. Item where two or more persons hold of the kinge by knightes seruice ioyntly to them, and to the heyres of one of them, & hee that hath ỹ inheritāce thereof dieth, his heire being with in age, the kinge shall haue the warde and mariage of the body of such heire the like of the freeholder or freholders of the lands so holden by knights seruice notwithstandiag.

Sauinge to all women such right and title, of dower as they ought to haue of any lands, or tenements to be assigned vnto them out of ỹ two partes of ỹ sayd lands or tenements seuered from the third part as is aboue sayd, & not otherwise. And sauinge also to the kinge the reuersion of all such tenementes in ioynture, and dower immediatly after the death of such tenaunt, if they shal happen to dye, during, the vsuage of the kinges Wardes.

Of

IT is enacted, that from ỹ firste day of July in the yeare of our Lorde a thousande fiue hundreth and fourty, all mariages wythin this Church of Englãde cõtracted betwene lawfull persons as by this acte we declare, all persons to be lawful that be not prohibited by Gods lawe to mary, such mariages, being cõtract & solemnised in the face of the church and consummate with bodely knowledge of fruite of childrẽ or childe being had therein betwen ỹ parties so maryed shalbe demed & taken to bee lawful, good and indissoluble, notwithstãdig any precontracte of Matrimony not consummate with bodely knowledge eyther of ỹ persons so maryed or both shall haue made vnto any other before the time of cõtracting that mariage which is solempnised and consummate or whereof such fruict is ensued or may ensue as afore, and notwithstanding any dispensation, prescription, lawe, or other thing graunted or confirmed by acte or otherwise. And that no reuersion or prohibition (Gods lawe excepte) shall trouble, impeache any mariage without leuiticall degrees. And ỹ no person shall after the sayd first day of July aforesayd, be admitted to any of the spirituall Courtes within this the kings realme or any hys other landes & Dominions to any processe, plee, or allegation contrary to thys acte.

This act repealed, by 2, et 3. Edw. VI. 23.

FINIS.

HEre it must be remembred that the number in this Table following doth expresse & shewe the leafe where you shal finde your desire and this letter. A. maketh mention of the first page or syde, and this lettter B. the secōd page. or side.

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W. S.

Relegi unico die, 6. Martij. 1584.
Cy former halfe oß estates, before dinnar:
Cy other halfe oß seruices, &c. in Cy
Afternoone: at other reading, xxx.
leaues, with Cy uauntage.

Gabriel Harvey.

Mr Easton. Mr Cooke/
Mr Philips/

Now at the last Doctour
Cowells Latin Institutions
of the Common Lawe:
according to the method of
our Ciuil Institutions.
With his booke of the signifi-
cation of words: or
the Interpreter.
now in hands.

a